

BUSINESS MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

CALIFORNIA ENERGY COMMISSION
HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 31, 2001

10:00 A.M.

Reported by:
Valorie Phillips
Contract No. 150-01-006

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMISSIONERS PRESENT

William Keese, Chairman

Michal Moore

Robert A. Laurie

Robert Pernell

Arthur Rosenfeld

STAFF PRESENT

Steve Larson

Jonathan Blee

Garret Shean

Paul Kramer

Roger Johnson

Chuck Najarian

Adam Pan

David Hatfield

Elizabeth Shirakh

Lilly Ghaffari

Barbara Byron

Don Aumann

Maura Clark

Philip Misemer

Alan Argentine

David Maul

Sandra Fromm

PUBLIC ADVISER

Roberta Mendonca

ALSO PRESENT

Michael J. Carroll, Attorney
Latham and Watkins
representing CalPeak

Mark Lyons
Glenn Sampson
Calpeak

Gregory L. Wheatland, Attorney
Ellison, Schneider and Harris, LLP
representing Calpine

Brian McDonald, Manager, Project Development
Calpine

Dana Dean
Good Neighbors Steering Committee

Karen J. Nardi, Attorney
McCutchen, Doyle, Brown and Enersen, LLP
representing Valero Refining Company-California

Sam Hammonds, Principal Environmental Engineer
Valero Refining Company-California

Mark Wolfe, Attorney
California Unions for Reliable Energy

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1 P R O C E E D I N G S

2 10:00 a.m.

3 COMMISSIONER LAURIE: The October 31st
4 meeting of the California Energy Commission is
5 called to order. Commissioner Pernell, if you
6 would lead us in the Pledge, please.

7 (Thereupon, the Pledge of Allegiance was
8 recited in unison.)

9 COMMISSIONER LAURIE: Ladies and
10 gentlemen, good morning. My name is Robert
11 Laurie, Commissioner at the Energy Commission. I
12 am not Chairman of the Commission, but I'm old and
13 therefore I get to sit in the middle chair today.

14 Chairman Keese and Commissioner Moore
15 are in the process or have called in. Let me make
16 inquiry. Gentlemen, are you on the line at this
17 point? No. You know, both of those gentlemen are
18 acting and sounding more intelligent all the time,
19 aren't they?

20 (Laughter.)

21 COMMISSIONER LAURIE: What we are going
22 to do is as soon as we can get both Commissioners
23 on the line we will proceed with the hearing on
24 the Valero case. So if staff can advise when we
25 have those.

1 We will move first to the consent
2 calendar. One item. Altos Management Partners.
3 Is there a motion to adopt consent calendar.

4 COMMISSIONER PERNELL: Mr. Chairman, I
5 move the consent calendar.

6 COMMISSIONER ROSENFELD: Second.

7 COMMISSIONER LAURIE: Moved and seconded
8 to adopt consent. All in favor, please say aye.

9 (Ayes.)

10 COMMISSIONER LAURIE: Chairman Keese, is
11 that you?

12 CHAIRMAN KEESE: Yes.

13 COMMISSIONER LAURIE: Thank you.

14 Commissioner Moore, are you on the line yet?

15 Okay, we'll wait for Commissioner Moore and then
16 we will take on the Valero case.

17 Item 2, Inland empire Energy Center.
18 That matter is taken off calendar and will be
19 reset at a future meeting. And that would be the
20 same for item number 3, that is the approval of a
21 Committee for that project.

22 SMUD Cosumnes Power Plant Project. That
23 matter is continued to the November 14th meeting.
24 And that would include number 5, as well.

25 So we are at item 6, CalPeak Border.

1 Commission consideration and possible approval of
2 a petition to extend the September 30, 2001 online
3 date of the 50 megawatt CalPeak Border emergency
4 peaker project. Mr. Najarian, good morning.

5 MR. NAJARIAN: Good morning. My name is
6 Chuck Najarian; I'm the Power Plant Compliance
7 Program Manager for the Energy Commission.

8 This item concerns the 49.5 megawatt,
9 gas-fired project that the Commission certified on
10 July 11, 2001. CalPeak is requesting that the
11 Commission amend the decision to extend the online
12 date beyond the September 30th deadline.

13 Specifically their amendment petition
14 requested a delay to November 7th. And the Border
15 project has since come on line as of October 26,
16 2001.

17 The decision specifies that the
18 Commission will conduct a hearing to determine the
19 cause of the delay and consider what sanctions, if
20 any, are appropriate.

21 The decision also specifies that if the
22 Commission finds CalPeak failed to proceed with
23 due diligence to meet the September 30 deadline
24 CalPeak shall forfeit its certification.

25 Therefore, the central issue is whether

1 sanctions, including forfeiture of the
2 certification if determined that CalPeak failed to
3 proceed with due diligence, are appropriate.

4 If the Commission finds CalPeak
5 proceeded with due diligence the Commission should
6 approve the extension and decide if sanctions are
7 appropriate due to the failure to be operational
8 by September 30, 2001.

9 If the Commission finds CalPeak failed
10 to proceed with due diligence, CalPeak's
11 certification should be forfeited.

12 Staff conducted an analysis regarding
13 issues of due diligence and of sanctions. Staff's
14 analysis identified two points arguably supporting
15 a finding of due diligence on the part of CalPeak.

16 Number one, CalPeak had problems
17 securing their selective catalytic reduction
18 system, SCR, components from their manufacturers
19 in that their manufacturer did not meet required
20 delivery dates consistent with the September 30
21 deadline.

22 Two, CalPeak had problems securing their
23 gas compressor unit from their manufacturer in
24 that their manufacturer did not meet required
25 delivery dates consistent with the September 30

1 deadline.

2 Staff's analysis identified one point
3 that arguably was inconsistent with due diligence.
4 And that is that CalPeak did not start
5 construction until 17 days after certification
6 because they were unable to use an access road due
7 to environmental conflicts. Therefore, they
8 constructed a temporary access road in order to
9 avoid environmental impacts.

10 Staff's analysis identified the
11 following points concerning whether or not
12 sanctions are appropriate. One, CalPeak mobilized
13 a substantial workforce and initiated an
14 aggressive 24-hour, seven-day-a-week construction
15 schedule.

16 Two, CalPeak submitted a complete design
17 package to the chief building official to minimize
18 time required for plan check and review.

19 Three, CalPeak procured the combustion
20 turbine generator and other equipment in advance
21 of foundation pouring.

22 Four, CalPeak notified staff once they
23 were aware that delays to SCR components might
24 compromise their September 30 deadline.

25 Five, CalPeak sent engineers to the SCR

1 manufacturer in an effort to determine the status
2 of the delayed components and resolve delivery
3 delays.

4 Six, CalPeak rerouted SCR components
5 from other projects to the Border project site,
6 and actually built some SCR components onsite
7 rather than rely on delivery from the
8 manufacturer.

9 Seven, CalPeak obtained a 100-hour
10 variance from the local air district in case they
11 needed to operate the plant without SCR technology
12 to meet energy emergencies. This variance was not
13 necessary.

14 Eight, CalPeak sent engineers to the gas
15 compressor manufacturer to inspect the status of
16 the gas compressor unit, and required shipping in
17 coordination with the delivery of the SCR unit, so
18 as not to cause further delays.

19 Nine, CalPeak continued aggressive
20 construction efforts despite concerns about SCR
21 and gas compressor component delays.

22 Ten, Calpeak Border project is
23 operational as of October 26, 2001.

24 On balance, staff believes that CalPeak
25 proceeded with due diligence and therefore should

1 not forfeit its license. Furthermore, staff does
2 not believe that sanctions are appropriate because
3 CalPeak acted aggressively in an effort to meet
4 the September 30 deadline.

5 Once circumstances beyond their control
6 arose, CalPeak took reasonable steps to remedy
7 those circumstances, and continued to act
8 aggressively to bring the Border project on line
9 as soon after September 30th as possible.

10 Staff finds that extending the online
11 date of the Border project will not result in
12 environmental impacts; will remain in compliance
13 with laws, ordinances, regulations and standards;
14 and will be beneficial to the project owner and
15 the public; and that the amendment is based on
16 information that was not available prior to the
17 Commission's certification.

18 Therefore, staff recommends that the
19 Commission approve CalPeak's amendment petition
20 and extend the online date to October 26th, which
21 is the actual online date, without sanctions.

22 COMMISSIONER LAURIE: Mr. Najarian,
23 what's the conflict between October 26th and
24 November 7th, which is what is being proposed?

25 MR. NAJARIAN: When the petition was

1 filed by CalPeak Corporation they were estimating
2 a November 7 online date. And in effect what
3 happened is they beat their expectations and came
4 online earlier.

5 So staff believes that the Commission
6 should rely on that actual date.

7 COMMISSIONER LAURIE: Thank you. Does
8 the applicant have any comment at this point?

9 MR. CARROLL: Good morning. Mike
10 Carroll, Latham and Watkins, on behalf of the
11 applicant, CalPeak.

12 The details supporting the request for
13 the extension are spelled out in the petition and
14 staff report, and quite honestly I've been
15 prepared to provide some highlights on those, but
16 Mr. Najarian has done such an excellent job
17 hitting all of the significant points, I think I
18 would simply offer up our availability for any
19 questions that the Commission may have.

20 Mr. Mark Lyons from CalPeak is here with
21 me and would be happy to provide any additional
22 detail or answer any questions that you have.
23 But, again, I think that was a very good summary
24 of the situation. And we would urge the
25 Commission to act consistent with the staff

1 recommendation.

2 COMMISSIONER LAURIE: Thank you, sir.

3 Do the Commissioners have any questions of
4 applicant or staff at this point?

5 Before I entertain a motion I'll ask if
6 any members of the audience have any comment on
7 this item?

8 Seeing none, bring it back to the
9 Commission. A motion is in order.

10 COMMISSIONER PERNELL: Mr. Chairman, I
11 would move staff's recommendation which is to
12 approve the amended petition.

13 COMMISSIONER LAURIE: Thank you,
14 Commissioner Pernell. Do we have a second?

15 COMMISSIONER ROSENFELD: Second.

16 COMMISSIONER LAURIE: Does staff
17 recommend a need to adopt the findings as
18 contained in the staff report on page 3, which is
19 what you would normally require for an amendment?

20 MR. NAJARIAN: Yes, we believe that
21 would be most appropriate.

22 COMMISSIONER LAURIE: Thank you.
23 Gentlemen, does your motion including the findings
24 as proposed by staff in the staff report?

25 COMMISSIONER PERNELL: The maker of the

1 motion will include the findings, Mr. Chairman.

2 COMMISSIONER LAURIE: Commissioner
3 Rosenfeld?

4 COMMISSIONER ROSENFELD: Sure.

5 COMMISSIONER LAURIE: Thank you. We
6 have a motion and a second. Mr. Chairman, did you
7 have any comment? Chairman Keese?

8 CHAIRMAN KEESE: No.

9 COMMISSIONER LAURIE: Thank you. All in
10 favor of the motion please say aye.

11 (Ayes.)

12 COMMISSIONER LAURIE: The motion passes
13 unanimously. Thank you, gentlemen, very much.

14 Commissioner Moore, are you on the line
15 yet?

16 Mr. Larson, could you contact Ms. Bakker
17 and see if she's been in communication with
18 Commissioner Moore and can provide us an estimate
19 of Commissioner Moore's availability, please?
20 Thank you.

21 SPEAKER: Commissioner Moore's flight is
22 about 10:30, his plane lands about 10:30.

23 COMMISSIONER LAURIE: His plane comes in
24 at 10:30?

25 SPEAKER: Yes, and that's when he --

1 COMMISSIONER LAURIE: Well, wait a
2 minute. A couple weeks ago the Chairman was able
3 to sit on his telephone on the plane for about
4 four and a half hours bankrupting our budget for
5 the next seven years.

6 (Laughter.)

7 COMMISSIONER LAURIE: Okay. I know
8 Commissioner Moore was very interested in this
9 project. Chairman Keese, what's your timeframe?
10 Can you wait a few minutes or are you --

11 CHAIRMAN KEESE: I have other people
12 attending the meeting with me, so I rely on them.

13 COMMISSIONER LAURIE: Okay. Well, then
14 we'll give Commissioner Moore some time to get off
15 of his aircraft and give us a call. Thank you.
16 And I'd ask the rest of you just to be patient; we
17 appreciate that.

18 Item number 7, Calpine Gilroy.
19 Commission consideration and possible approval of
20 a petition to extend the September 30, 2001 online
21 date of the 135-megawatt Calpine Gilroy emergency
22 peaker project. Mr. Najarian.

23 MR. NAJARIAN: Thank you. This item
24 concerns the Calpine Gilroy City LM6000 emergency
25 peaker project, a 135-megawatt, simple cycle, gas

1 fired project certified on May 15, 2001.

2 Calpine is requesting that the
3 Commission amend the decision to extend the online
4 date beyond the September 30 deadline.
5 Specifically, they are requesting a delay of two
6 months to November 30, 2001.

7 The decision specifies that the
8 Commission will conduct a hearing to determine the
9 cause of the delay and consider what sanctions, if
10 any, are appropriate. The decision also specifies
11 that if the Commission finds Calpine failed to
12 proceed with due diligence to meet the September
13 30 deadline, Calpine shall forfeit its
14 certification.

15 Therefore, the central issue is whether
16 sanctions, including forfeiture of the
17 certification if determined that Calpine failed to
18 proceed with due diligence, are appropriate.

19 If the Commission finds Calpine
20 proceeded with due diligence the Commission should
21 approve the extension and decide if sanctions are
22 appropriate due to the failure to be operational
23 by September 30th.

24 If the Commission finds Calpine failed
25 to proceed with due diligence Calpine's

1 certification should be forfeited.

2 Staff conducted an analysis regarding
3 the issues of due diligence and of sanctions.
4 Staff's analysis identified three points arguably
5 supporting a finding of due diligence on the part
6 of Calpine.

7 One, Calpine had to delay construction
8 because human remains were found at the site.

9 Two, Calpine experienced further delays
10 as a result of restrictions to air traffic due to
11 the terrorist attacks.

12 Three, despite signing an
13 interconnection agreement with PG&E on August 15,
14 2001, Calpine will not be able to interconnect the
15 Gilroy project to the grid until November 30,
16 2001, because of delays with PG&E's
17 interconnection component manufacturers.

18 Staff's analysis identified two points
19 that arguably were inconsistent with due
20 diligence. One, lack of site control resulted in
21 a 22-day delay in the start of construction. And
22 delays in completing sensitive bird surveys
23 resulted in an additional 13 days of construction
24 limited to daylight hours.

25 Two, staff was not informed of possible

1 interconnection delays preventing staff from
2 trying to assist Calpine with PG&E's
3 interconnection schedule.

4 Staff's analysis identified the
5 following points concerning whether or not
6 sanctions are appropriate. One, Calpine mobilized
7 a substantial workforce and initiated an
8 aggressive 24-hour construction schedule once the
9 site could handle multiple crews.

10 Two, Calpine procured two combustion
11 turbine generators and other equipment in advance
12 of foundation pouring.

13 Three, Calpine obtained an offsite
14 storage yard in order to procure and store
15 critical path components to prevent potential
16 delivery delays.

17 Four, Calpine used multiple construction
18 crews on multiple tasks simultaneously in order to
19 expedite construction.

20 Five, despite the fact that human
21 remains resulted in cultural investigation and a
22 crime scene limiting construction to designated
23 areas, the air traffic restrictions and delays in
24 interconnecting to the grid, Calpine continued a
25 24-hour construction schedule and made every

1 effort to resolve these issues in a timely manner.

2 On balance, staff believes that Calpine
3 proceeded with due diligence and therefore should
4 not forfeit its license.

5 Staff does not believe that sanctions
6 are appropriate because Calpine acted aggressively
7 in an effort to meet the September 30 deadline.
8 Once circumstances beyond their control arose,
9 Calpine took reasonable steps to remedy those
10 circumstances. And has continued to act
11 aggressively to bring the Gilroy project online as
12 soon after September 30 as possible.

13 Staff finds that extending the online
14 date of the Gilroy project will not result in
15 environmental impact; will remain in compliance
16 with laws, ordinances, regulations and standards;
17 and will be beneficial to the project owner and
18 the public. And that the amendment is based on
19 information that was not available prior to the
20 Commission's certification.

21 Therefore, staff recommends that the
22 Commission approve Calpine's amendment petition to
23 extend the online date to November 30, 2001,
24 without sanctions.

25 That concludes my presentation.

1 COMMISSIONER LAURIE: Thank you, Mr.
2 Najarian. Do the Commissioners have questions of
3 staff at this point? No questions.

4 We'd like to hear from the applicant if
5 you have any comment at this time.

6 MR. WHEATLAND: Just briefly. Good
7 morning; my name is Greg Wheatland, and with me is
8 Brian McDonald.

9 The staff has conducted a thorough and
10 thoughtful analysis of our request. As indicated
11 in this analysis Calpine has been acting
12 aggressively and with due diligence to bring this
13 project online as soon as possible.

14 We are making every effort to bring the
15 project online by November 30th, and we are today
16 confident of meeting that deadline.

17 However, as past events have shown,
18 unforeseen events may impact this schedule.
19 Therefore, we would respectfully suggest to the
20 Commission today that we set the online date as
21 December 14th to provide a prudent buffer just in
22 case additional unforeseen events occur.

23 We have discussed this matter with staff
24 and we believe that by setting the deadline as
25 December 14th, if there is additional force

1 majeure events it would avoid the necessity of
2 having to bring this matter back to the Commission
3 for any further extension.

4 COMMISSIONER LAURIE: Any comments to
5 that, Mr. Najarian?

6 MR. NAJARIAN: Staff's reaction to that
7 is it appears to be a prudent request. We
8 understand that Calpine is going to try to
9 continue to meet November 30 or earlier. But in
10 case things happen that are outside of their
11 control I think it would be prudent to allow for
12 the additional time.

13 COMMISSIONER LAURIE: Okay. Anything
14 else, sir?

15 MR. WHEATLAND: No. Thank you very
16 much.

17 COMMISSIONER LAURIE: Thank you. Any
18 comments from the public before we bring the
19 matter back to the Commission?

20 MS. MENDONCA: Commissioner Laurie, the
21 Public Adviser this morning received a phone call
22 on our 800 number at 9:00 from Mr. William Garbett
23 who represents the P.U.B.L.I.C. And his question
24 has to do with whether the petition has been
25 basically violated to such a degree that the

1 applicant should have to pursue some type of
2 injunctive relief under 25900 of the Government
3 Code.

4 He asked questions, has the emergency
5 petition been violated; can it be changed into a
6 regular petition and have a hearing once again
7 and/or are there penalties available because of
8 the major amendment, and in his eyes, the
9 extension of time that the emergency petition is a
10 major amendment. So, are there penalties involved
11 to Calpine.

12 COMMISSIONER LAURIE: Thank you, Ms.
13 Mendonca. Mr. Garbett's comments are noted.

14 The matter is back to the Commission. A
15 motion would be in order, or questions or
16 comments.

17 MR. NAJARIAN: Commissioner Laurie, one
18 point of clarification. The staff, in
19 recommending the extension, suggests that the
20 Commission adopt the language on page 8 of the
21 staff analysis, changing the online date to what I
22 believe now is December 14, 2001.

23 COMMISSIONER LAURIE: Well, there's some
24 findings have to be made. One, there needs to be
25 made a finding of due diligence. In addition to

1 that, the required findings for amendments which
2 are set forth in the staff report, as well, on
3 page 3 of the staff report, would also be an
4 appropriate ingredient for the motion, would it
5 not?

6 MR. NAJARIAN: That's correct.

7 COMMISSIONER LAURIE: Thank you. What's
8 the desire of the Commission?

9 COMMISSIONER PERNELL: Mr. Chairman, I
10 would move staff recommendations which include the
11 findings and the amended date of December 14th.

12 MS. MENDONCA: Commissioner Laurie,
13 there's somebody that wants to speak on this on
14 the phone.

15 COMMISSIONER LAURIE: Okay, wait till we
16 have a second on the motion, please.

17 COMMISSIONER ROSENFELD: Second.

18 COMMISSIONER LAURIE: Thank you, we have
19 a motion and a second. Additional public comment?
20 Please proceed. Will the person on the telephone
21 please identify yourself.

22 MS. MENDONCA: Ms. Dean, your line is
23 open.

24 MS. DEAN: Hello.

25 COMMISSIONER LAURIE: Hi.

1 COMMISSIONER PERNELL: Good morning.

2 MS. DEAN: This is Dana Dean from the
3 Good Neighbor Steering Committee.

4 SPEAKER: She's Valero.

5 MS. DEAN: Yes, I am.

6 COMMISSIONER LAURIE: We are not on that
7 issue presently.

8 MS. DEAN: I didn't think so.

9 (Laughter.)

10 COMMISSIONER LAURIE: Thank you, Ms.
11 Dean. Hang on, we'll get back to you. Okay.
12 Anybody else want to comment on this item?

13 We have a motion and a second. All in
14 favor please say aye.

15 (Ayes.)

16 COMMISSIONER LAURIE: Opposed? Motion
17 passes unanimously.

18 MR. WHEATLAND: Thank you very much.

19 COMMISSIONER LAURIE: Thank you,
20 gentlemen.

21 Item 8, the petition for Pegasus to
22 extend their online date has been withdrawn. We
23 will hold item 9 until Commissioner Moore can join
24 us.

25 We'd like at this time to move to item

1 17 because the individuals present are under a
2 very tight timeframe, so if the Commissioners
3 don't mind, we'll take up item 17, Alzeta
4 Corporation.

5 Possible approval of contract 500-01-010
6 for \$2,404,310 to advance research, commercial
7 development and field testing of a low NOx
8 combustion system for gas turbine engines used in
9 distributed generation applications.

10 Mr. Hatfield.

11 MR. HATFIELD: Good morning,
12 Commissioners.

13 COMMISSIONER LAURIE: Good morning.

14 MR. HATFIELD: This is the first of nine
15 contracts that will be brought before the
16 Commission that were proposed for award out of a
17 recent solicitation from the Environmentally
18 Preferred Advanced Generation Group. The total
19 funding is \$22.8 million.

20 Today's item with Alzeta Corporation
21 will advance their combustor technology. The
22 technology will provide very very low NOx and low
23 CO and unburned hydrocarbon performance at a cost
24 that far -- that is far below the cost of exhaust
25 gas cleanup like SCR or SCONox.

1 This should be applicable to smaller gas
2 turbines, under 25 megawatts, where the cost of
3 the cleanup is excessive. And should help develop
4 and implement and hasten penetration of these
5 engines into the distributed generation market in
6 California.

7 COMMISSIONER LAURIE: This is funded
8 under PIER, is that correct?

9 MR. HATFIELD: Yes, it is.

10 COMMISSIONER LAURIE: And has it been
11 brought before and reviewed by the R&D Committee?

12 MR. HATFIELD: This contract has.

13 COMMISSIONER LAURIE: Thank you. Any
14 questions of staff?

15 COMMISSIONER PERNELL: I do have a
16 question, Mr. Chairman.

17 COMMISSIONER LAURIE: Commissioner
18 Pernell.

19 COMMISSIONER PERNELL: My question is
20 haven't we funded this type of research before?

21 MR. HATFIELD: Yes.

22 COMMISSIONER PERNELL: Are we getting
23 any value out of the resources that we're putting
24 into this research?

25 MR. HATFIELD: Yes, Commissioner, we

1 are. We've funded with Alzeta, this is the third
2 in a series of contracts developing the gas
3 turbine combustor.

4 We have funded them in other combustion
5 technology research which has resulted in
6 industrial boiler, domestic hot water heater, and
7 in combustion incineration technologies that have
8 all made their way into the market and are
9 performing at very very good emissions levels.

10 We're also funding other technologies
11 through at least two other developers that I can
12 think of off the top of my head, again with
13 multiple contracts, that are directed specifically
14 towards gas turbine combustion.

15 COMMISSIONER PERNELL: And are we
16 funding any other organizations that are
17 researching the same types of technologies?

18 MR. HATFIELD: Actually the technologies
19 that I'm thinking of, the Alzeta technology is
20 what's referred to as surface stabilize
21 combustion. It's a lean premix technology.

22 We're funding Catalytic Energy Systems,
23 Incorporated, which is a catalytic combustion
24 technology. And we're also funding Clean Energy
25 Systems, which is a Sacramento company, by the

1 way. And that is an oxygen-based methane
2 combustion technology.

3 All these are geared toward extremely
4 low or no NOx combustion.

5 COMMISSIONER PERNELL: Okay. And, as
6 the Chairman has said, it went through the
7 Committee and came out with a positive
8 recommendation.

9 MR. HATFIELD: Yes, the notice of
10 proposed awards was submitted to the Committee, I
11 believe it was on September 6th. And the list of
12 proposed awards was approved en masse, and then
13 each individual contract will also proceed through
14 the Committee. The Alzeta contract has been
15 reviewed in particular by the Committee and
16 approved.

17 COMMISSIONER PERNELL: All right, thank
18 you, Mr. Chairman.

19 COMMISSIONER LAURIE: Any member of the
20 public wish to comment on this item? If not, then
21 back to the Commission. Commissioner Rosenfeld.

22 COMMISSIONER ROSENFELD: I move the
23 approval of the contract.

24 COMMISSIONER PERNELL: Second, Mr.
25 Chairman.

1 COMMISSIONER LAURIE: Moved and
2 seconded. All in favor please say aye.

3 (Ayes.)

4 COMMISSIONER LAURIE: Opposed? Motion
5 passes unanimously.

6 MR. HATFIELD: Thank you.

7 COMMISSIONER LAURIE: Thank you, David.

8 Item number 10, Energy Innovations Small
9 Grant Program. Consideration and possible
10 approval of nine grant projects totaling \$674,531
11 with the PIER program funding of grants under the
12 Energy Innovations Small Grant Program. Phil,
13 good morning. No --

14 COMMISSIONER ROSENFELD: He's not there.

15 COMMISSIONER LAURIE: Okay, fine, we
16 will table that item.

17 Item 11, Atlantis -- and perhaps
18 somebody can contact Mr. Misemer and see if he
19 plans to join us sometime.

20 Item 11, Atlantis Infotech, Inc.
21 Possible approval of contract 300-99-020,
22 amendment 1, for \$15,000 to extend the term of the
23 contract to March 31, 2002, and add funds to
24 enhance the database function beyond their
25 original project scope.

1 Mr. Pan, good morning, sir.

2 MR. PAN: Good morning, Commissioners.

3 COMMISSIONER LAURIE: And could you
4 speak very closely into that microphone, please.

5 MR. PAN: Okay. Thank you. This is a
6 contract amendment to improve the database. It is
7 functioning right now, and we are gathering data
8 reported by owners of power plants for their
9 output and fuel use.

10 COMMISSIONER LAURIE: Thank you.
11 Commissioners have any questions of staff?
12 Commissioner Pernell.

13 COMMISSIONER PERNELL: Mr. Chairman, I
14 don't have any questions. I would be honored to
15 move the item.

16 COMMISSIONER LAURIE: Thank you. Let me
17 ask for public input first, if I may. Any member
18 of the public have any comment on this item?

19 Seeing none, Commissioner Pernell.

20 COMMISSIONER PERNELL: Mr. Chairman, I
21 would move staff recommendations on the item, item
22 11.

23 COMMISSIONER ROSENFELD: Second.

24 COMMISSIONER LAURIE: The item has been
25 moved and seconded.

1 All in favor, please say aye.

2 (Ayes.)

3 COMMISSIONER LAURIE: Opposed, nay.

4 Item passes unanimously. Thank you, Mr. Pan.

5 MR. PAN: Okay, thank you.

6 COMMISSIONER LAURIE: Item 12, L.A.

7 Unified School District. Possible approval of
8 contract 400-01-018 for \$60,000 to provide a
9 coordinator position to be funded over 12 months
10 to support the High Performance School Task Force
11 in the new construction and renovation of
12 activities of the district.

13 Ms. Shirakh, good morning.

14 MS. SHIRAKH: Good morning. My name is
15 Elizabeth Shirakh. And today for your
16 consideration I have a proposed contract for
17 \$60,000 with the Los Angeles Unified School
18 District.

19 This contract will provide support to
20 the District's High Performance School Working
21 Group. This working group consists of all major
22 facility divisions within the school district,
23 state agencies such as the California Energy
24 Commission, Department of Consumer Affairs and
25 Integrated Water and Waste Management Board, and

1 local utilities including Los Angeles Department
2 of Water and Power, Southern California Edison and
3 Southern California Gas Company.

4 The goal of the working group is to
5 create a new generation of high performance
6 schools facilities in the Los Angeles Unified
7 School District. High performance schools are
8 healthy, comfortable, energy efficient, resource
9 efficient, easy to operate and maintain. They
10 help school districts achieve higher test scores,
11 retain quality teachers and staff, reduce
12 operating costs while at the same time are
13 environmentally friendly.

14 The working group has also been working
15 with the Collaborative for High Performance
16 Schools, also known as CHiPS, to develop design
17 criteria so that all newly constructed and
18 renovated district schools are high performance
19 schools.

20 Last year during startup of the working
21 group the federal Environmental Protection Agency,
22 Region IX, provided staff support for the working
23 group to coordinate activities.

24 This contract will now allow the
25 District to have ownership of these coordination

1 activities.

2 If the contract is approved the District
3 plans to hire a coordinator to provide support
4 services to the working group that include
5 planning, organizing and facilitating working
6 group meetings, provide general planning and
7 management services to the group, plan and
8 coordinate special projects and report on
9 progress.

10 The coordinator will also provide
11 technical assistance and support to architects,
12 develop specification performance criteria and
13 monitor high performance criteria compliance.

14 The \$60,000 contract is funded through
15 the U.S. Department of Energy's 2001 Rebuild
16 America Grant. Earlier this month the Commission
17 was awarded a \$200,000 Rebuild America grant. The
18 successful grant proposal specifically identified
19 the activities to be performed by this contract
20 and identified the federal funding allocated for
21 these purposes.

22 (Thereupon Commissioner Michal Moore
23 joined the proceedings via telephone.)

24 MS. SHIRAKH: This item was approved by
25 the Efficiency Committee on September 25th. And

1 this concludes my presentation. I'd be happy to
2 answer any questions.

3 COMMISSIONER LAURIE: Thank you very
4 much, a good presentation.

5 Commissioner Pernell, Commissioner
6 Rosenfeld, do you have any questions?

7 COMMISSIONER PERNELL: Mr. Chairman,
8 just a comment. The high performance schools
9 concept originated here at the Commission, and its
10 charge was to build and renovate school buildings
11 to high performance energy efficiency schools.

12 This has come before the Efficiency
13 Committee, and at the proper time I would be
14 pleased to move the item.

15 COMMISSIONER LAURIE: Thank you, sir.
16 Any additional comments by any members of the
17 public at this time?

18 Seeing none, Commissioner Pernell.

19 COMMISSIONER PERNELL: Mr. Chairman, I
20 would move the staff recommendation.

21 COMMISSIONER ROSENFELD: Second.

22 COMMISSIONER LAURIE: Moved and seconded
23 to approve staff recommendation.

24 All in favor, please say aye.

25 (Ayes.)

1 COMMISSIONER LAURIE: Opposed, nay. The
2 matter passes unanimously. Thank you very much.

3 COMMISSIONER PERNELL: Thank you.

4 MS. SHIRAKH: Thank you.

5 COMMISSIONER LAURIE: We'll now go back
6 to item number 9, the Valero Cogeneration Project.
7 We do have Commissioner Moore on line. Ms. Dana
8 Dean is also on the line. Her group is an
9 intervenor in the case.

10 We will hear from Mr. Garret Shean, the
11 Hearing Officer. We'll hear from staff; we'll
12 hear from the applicant; we'll hear from the
13 intervening parties. We'll take public comment,
14 and then we'll bring it back to the Commission for
15 action.

16 Mr. Shean.

17 HEARING OFFICER SHEAN: Commissioners,
18 this matter was continued from the last business
19 meeting two weeks ago. And in the interim, as we
20 indicated then, the Committee has conducted a
21 hearing in Benecia yesterday on air quality
22 matters, at which both a witness from CURE, Dr.
23 Phyllis Fox, and a witness from the Air District
24 testified as to the final determination of
25 compliance.

1 We had a good healthy exchange and what
2 has resulted from that is that CURE has proposed,
3 and we've included this in the backup material, a
4 series of changes to the language that appear in
5 the revised Presiding Member's Report. I'll get
6 to this in greater depth in a moment.

7 As a result of that hearing, and
8 consideration of these proposed changes, and all
9 matters that were brought to the Committee through
10 oral comments or testimony yesterday, and any
11 written comments that have been received on the
12 revised Presiding Member's Report, I have, and
13 will give to you in a moment, a recommendation for
14 amendments to the revised Presiding Member's
15 Report.

16 And they are as follows. And you have
17 it before you on this page.

18 COMMISSIONER LAURIE: Mr. Shean, let me
19 interrupt for a moment. I want to make sure
20 Commissioner Moore can hear us. Commissioner
21 Moore, I want to make sure, I've not checked in
22 with you, I want to make sure you're able to hear
23 the proceedings okay?

24 COMMISSIONER MOORE: I can hear them
25 fine, and would have called in from the phone on

1 the plane but Commissioner Pernell's Office
2 confiscated my credit card.

3 (Laughter.)

4 COMMISSIONER MOORE: So I had to come
5 out to a landline.

6 COMMISSIONER PERNELL: Well, we're glad
7 you made it, Commissioner Moore.

8 COMMISSIONER MOORE: Thank you.

9 COMMISSIONER LAURIE: Mr. Shean, thank
10 you.

11 HEARING OFFICER SHEAN: It's hard to
12 believe there's any airplane phone money in the
13 budget after Chairman Keese's call last time.

14 (Laughter.)

15 HEARING OFFICER SHEAN: The proposed
16 changes are as follows. I'm showing condition
17 AQ20 is the addition of language that Valero will
18 be required to restrict operations by, for
19 example, reducing firing or lowering fuel sulfur
20 to remain below the PM10 PSD threshold of 15 tons
21 per year.

22 In comments by the intervenor CURE, both
23 in writing and in their testimony yesterday, it
24 became clear that it would probably be a good idea
25 for the Commission to expressly state that its

1 expectation that Valero will not exceed the
2 threshold of 15 tons per year of PM10 since that
3 is the rationale under which the Air District did
4 not perform a PSD review, as required by federal
5 law, if above these thresholds.

6 The applicant has suggested that rather
7 include that in AQ20, it be in 19H, which is
8 appropriate, since that is one of the PM10
9 conditions.

10 We also have, at the request of
11 Commissioner Pernell's Office, the addition of
12 sociol to reflect that this project owner shall
13 use skilled labor throughout the construction,
14 operation and maintenance of the facility.

15 The applicant has requested that the
16 verification be changed, since it's their
17 intention to begin construction immediately if you
18 vote to certify this facility, and that we
19 basically delete the words "at least ten days" and
20 begin the sentence with the word "Prior".

21 The last matter is an addition to the
22 adoption order to state the salient facts about
23 the conduct of the proceedings and the
24 availability of documents in the timeframes that
25 were in this particular proceeding. That's in the

1 first paragraph and in the second paragraph.
2 Based upon a memorandum from the General Counsel
3 that suggested that we may want to consider, as a
4 protective device for this particular case, a
5 statement that --

6 COMMISSIONER LAURIE: Well, wait, wait,
7 wait, wait, wait. Mr. Shean, I don't want you to
8 comment on any memorandum from the General
9 Counsels to the Commissioner. If you have
10 additional language that you want to propose, or
11 that you think is appropriate to propose, then do
12 it, but do not cite anything contained in that
13 memorandum.

14 HEARING OFFICER SHEAN: All right. Then
15 I can explain it this way. As part of the overall
16 program that we have for the processing of
17 expedited four-month proceedings we need to
18 contemplate, as an agency, the potentiality that
19 any of those proceedings may, at some point within
20 the conduct of that proceeding, fall out of the
21 four-month and need to be processed under the 12-
22 month.

23 I believe that what is offered here in
24 paragraph two is a good generic type of language
25 which will assure that any of the periods that

1 were used in the four-month proceedings, if they
2 are insufficient for the 12-month proceed, but
3 nonetheless afford all the parties due process and
4 adequate notice and meaningful opportunity to be
5 heard, that under the provisions of the
6 regulations that time is shortened for the conduct
7 of those acts. And that paragraph will accomplish
8 that.

9 So that is the recommended changes. Let
10 me just go through, since I think it's
11 appropriate, we all put a lot of effort into
12 yesterday's hearing, some of the matters that CURE
13 has raised.

14 I have added the numerals that appear on
15 the margin of their proposed changes, and let me
16 characterize them, since I took a lot of time last
17 night and this morning to review them.

18 There are essentially some that are
19 housekeeping measures, essentially including
20 references in one condition to either source tests
21 being done in another, or the flip side of that
22 coin if you're talking about the source tests
23 determining the emission factors that are back in
24 another condition.

25 Having looked at that, while it may

1 appear that that would tighten up the conditions
2 in the revised Presiding Member's Proposed
3 Decision, I am satisfied for the moment that there
4 was good reason for the Air District to leave
5 these conditions as they are. And that the
6 flexibility that the Air District needs to apply
7 the conditions in this case is probably better
8 afforded by not making those housekeeping type
9 changes.

10 The essential reason for that is that we
11 are dealing with not necessarily a new fuel, but a
12 fuel, the refinery fuel gas which has made this
13 project unique both at the Commission and for the
14 Bay Area District to some degree, and they
15 recognize it, we recognize it, and I think that we
16 have gotten this permit to the point where it's
17 the best it can be under the current
18 circumstances.

19 There are some substantive proposed
20 changes, and I'd just like to remark on these so
21 that CURE will understand why the Committee has
22 not included them in the proposed amendments.

23 And that would be, I'll take item number
24 2, which is the addition of a daily average for
25 sulfuric acid mist emissions. On the basis of

1 what we heard yesterday it is, I think, our belief
2 that the standard is expressed in tons per year,
3 and it will be -- compliance will be best assured
4 by the quarterly tests that will be performed by
5 Valero or can be performed by the District.

6 And that at this point to state the
7 specific emission rate in pounds per hour for 24
8 hours is not appropriate.

9 Item number 3 is to change from 80
10 percent of maximum firing to 100 percent is,
11 again, was explained yesterday. Eighty percent
12 generally is the accepted normal operating mode.
13 And that for the condition of item 21 to be based
14 upon 80 percent, it will result in the
15 establishment of rates which, if more fuel is
16 added, meaning you move from an 80 percent firing
17 up to an 85 or 90 or 95, the emission rates times
18 the added fuel should nonetheless address within
19 the parameters of accuracy all the information
20 that is required in this. So it should remain at
21 80.

22 Item number 5 is their suggestion that
23 if the PM10 emissions are exceeded that the
24 facility shall cease operation. As was discussed
25 at yesterday's hearing, the cessation of

1 operations is one of a menu of options available
2 to the District.

3 The Committee intended to address this
4 in its added condition AQ19H which is that Valero
5 would be required to restrict operations in
6 anticipation of going above the threshold for PSD
7 PM10 of 15 tons per year. And that could include
8 the reduction of firing, or the lowering of the
9 fuel sulfur, which can be done by blending fuels
10 or switching entirely to natural gas.

11 So that the proposed change to number 5,
12 while it is an option, it is under the District
13 rules and under the circumstances we're in, too
14 restrictive. There should be more options
15 available.

16 I guess the last major substantive one
17 is on the last page, it's number 14. That prior
18 to commencing construction of phase two of this
19 project, that the final Title 5 permit be in hand.

20 As we learned yesterday, there is a
21 review to issue a Title 5 permit for the entirety
22 of the refinery. Based upon the District's
23 schedule that is somewhat of a moving target, but
24 expected to be available in the summer or early
25 fall of 2002.

1 Were this imposed it would essentially
2 mean that phase two would be substantially delayed
3 in construction. We believe and the District
4 explained that the methodologies that they're
5 using to establish the emission factors and to
6 insure compliance with the maximum emission
7 limitations is the kind of program that they
8 propose to be adopted in this Title 5 permit.

9 So that in essence if we understand the
10 District correctly, the remedies that the Title 5
11 permit would get are already here in the decision
12 that you have before you.

13 That concludes my comments.

14 COMMISSIONER LAURIE: Thank you, Mr.
15 Shean. Questions of the Commission of Mr. Shean?
16 Thank you, sir.

17 HEARING OFFICER SHEAN: Thank you.

18 COMMISSIONER LAURIE: Let me call on
19 staff at this point.

20 MR. KRAMER: At this point we don't have
21 anything to add. We defer to the applicant.

22 COMMISSIONER LAURIE: Thank you.

23 MS. DEAN: Commissioner.

24 COMMISSIONER LAURIE: Yes, Ms. Dean.

25 MS. DEAN: I hope this isn't entirely

1 inappropriate, but I'm going to ask, I have a
2 class at 11:00, and although I'm learning a lot
3 here, I don't think the teacher would appreciate
4 it if I wasn't there. So, could I speak now? I
5 just have a couple of comments.

6 COMMISSIONER LAURIE: Yes, ma'am, you
7 may.

8 MS. DEAN: Okay.

9 COMMISSIONER LAURIE: This is Dana Dean,
10 and can you identify the organization that you
11 represent, please.

12 MS. DEAN: Sure, absolutely. I'm with
13 the Good Neighbors Steering Committee. We are an
14 intervenor on the application.

15 COMMISSIONER LAURIE: Go ahead with your
16 comments, we can hear you fine.

17 MS. DEAN: First off, as I noted two
18 weeks ago when I was before you, I'm totally
19 impressed with everyone's effort in pulling this
20 together. And it's just from one agency to the
21 other it's been -- I've really appreciated all the
22 effort that's gone into it.

23 But, I think one thing that I didn't
24 properly emphasize was CURE's role in taking an
25 application which we, as the Good Neighbors

1 Steering Committee, could not support and moving
2 it through to a point where the document you have
3 before you is something that we do fundamentally
4 support.

5 First, we, because as I told you before,
6 there were problems with technical support issues.
7 We relied heavily on CURE's efforts and CURE's
8 documentation of the kind of problems that we also
9 saw, but we didn't have the resources to discuss
10 or really put out there on our own. So that's the
11 first issue.

12 Secondly, sort of an ironic twist, but
13 because of their efforts to bring to light some of
14 the long-term environmental impacts that we
15 restricted our efforts to, and because of the
16 regulators' and Valero's response to those
17 concerns, we're able to support the project, as I
18 said.

19 And third, because of them I think we
20 were able to more carefully revisit some of the
21 air quality issues yesterday at hearing. And I
22 thank Mr. Shean for articulating what those were,
23 because for the most part I agree with what the
24 Committee, how the Committee has characterized
25 CURE's concerns, and the reality of dealing with

1 them.

2 However, there's one area that I
3 actually don't agree on that I want to point out.
4 And that is the condition that CURE proposed to
5 require Title 5 permitting in hand for phase two.

6 Actually, from my perspective, the Title
7 5 permit is something that Valero has to do
8 anyway. So although it may be inconvenient and
9 somewhat cumbersome in terms of timing, it is
10 certainly not impossible for them to get their
11 environmental ducks in a row in a timely fashion
12 so that it can be dealt with in time for phase
13 two.

14 Now, I've said before that we do support
15 the project; we see the value of getting phase one
16 up and running as soon as possible. But, on the
17 other hand, if there is a reasonable way to make
18 this process more health protective, and I think
19 adding those little issues that will presumably be
20 taken care of in Title 5 is one way to do that.
21 If there's a way to reasonably do that, then I
22 would ask that we do it.

23 So, I guess I'm going to support the
24 condition to add the Title 5 permit requirement to
25 phase two.

1 Other than that I'll just close by
2 saying thank you all very very much. This has
3 been an enlightening experience. And as I said
4 before, we do fundamentally support the project.
5 So no matter how you decide to go on the Title 5
6 issue today, we thank you.

7 COMMISSIONER LAURIE: Thank you. You
8 have represented your organization extremely well.
9 We appreciate your participation.

10 MS. DEAN: Okay, thanks very much.

11 COMMISSIONER LAURIE: Thank you. Let me
12 now turn to the applicant. Good morning.

13 MS. NARDI: Good morning; my name is
14 Karen Nardi with the McCutchen Lawfirm. I'm
15 Counsel for Valero. And I have with me today Sam
16 Hammonds, who is an Environmental Engineer at the
17 Refinery and the Project Lead for this matter.

18 I'm going to be very brief, but I would
19 like to start by thanking you very much for the
20 considerable time that you spent with us two weeks
21 ago and the long and detailed discussions we had
22 of various issues.

23 I think there's really only one issue
24 remaining in this case that is of concern to us,
25 and it is the procedure by which the Commission

1 would, if it elects to do so, adopt and approve
2 the project.

3 I have looked at the amendments to the
4 revised Presiding Member's Proposed Decision,
5 which Mr. Shean gave to me this morning at 10:00,
6 and which have been presented in detail by him.

7 And we are in general agreement that
8 this would be an acceptable approach, that these
9 amendments are acceptable to us with the small
10 modifications that Mr. Shean outlined, changing
11 AQ20 to 19H; omitting the words "at least ten days
12 prior to construction" so that we could submit the
13 information requested in socio2 immediately if we
14 get approved and can begin and move forward with
15 construction.

16 However, I would like to say that we do
17 believe that the Commission has full authority and
18 we certainly encourage the Commission in the brief
19 that we filed to process this as a four-month
20 project.

21 We think that it was presented to us at
22 the beginning that this project qualified as a
23 four-month project. The Commission took a vote in
24 June which, at least from our understanding,
25 endorsed that concept. A lot of the public

1 information presented it, and we think you can
2 fairly make those findings.

3 But we do find this language that Mr.
4 Shean has proposed to be acceptable.

5 The only other comment I wanted to make
6 is that it would be useful if the Commission could
7 confirm that it did, the CEC did respond to the
8 CURE comments.

9 One of the things that we heard from
10 CURE last time was that it had not received a
11 direct response to its comments. And my
12 understanding was that the CEC Staff intended to
13 reply to those comments by adopting the very
14 detailed, point-by-point discussion that the Bay
15 Area Air Quality Management District made. And
16 just to confirm that point would be equally useful
17 to us in this proceeding.

18 So, with that, we have no objections to
19 the amendments to the revised Presiding Member's
20 Proposed Decision as presented.

21 COMMISSIONER LAURIE: And for the
22 record, does your client accept the conditions as
23 proposed as modified?

24 MS. NARDI: Correct, we accept the
25 conditions as proposed and as modified.

1 COMMISSIONER LAURIE: Thank you.

2 Questions of the applicant by the Commission?

3 COMMISSIONER PERNELL: I do have a
4 couple of questions, Mr. Chairman. One of them is
5 the general contractor is the EDG Power Group,
6 Incorporated.

7 MS. NARDI: That is correct.

8 COMMISSIONER PERNELL: That's correct,
9 okay. And is that a California company?

10 MS. NARDI: I'll let Mr. Hammonds answer
11 that question. I believe that it's not, but let
12 me have him answer that question.

13 MR. HAMMONDS: The EDG Power Group is
14 headquartered in Tulsa, Oklahoma. They have
15 recently been purchased by a company called
16 Encompass. I believe their headquarters is still
17 in Tulsa. But they do have subsidiaries in the
18 State of California, I understand.

19 COMMISSIONER PERNELL: All right, and
20 I'm assuming that the general contractor's license
21 is a California general contractor's license.

22 MR. HAMMONDS: I don't know the answer
23 to that.

24 COMMISSIONER PERNELL: Okay. Do you
25 know whose name the license is in?

1 MR. HAMMONDS: I have not inspected
2 their license.

3 COMMISSIONER PERNELL: Okay, and --

4 MR. HAMMONDS: If this is a critical
5 matter I could probably spend 30 seconds on the
6 phone and find that out, though.

7 COMMISSIONER PERNELL: I think it's
8 worth knowing. I mean you have stated you agree
9 with some of the conditions, so they address some
10 of my concerns. But I think it's prudent to know
11 that we have a -- especially if it's an out-of-
12 state contractor, that they have a California
13 valid contractors license.

14 COMMISSIONER MOORE: Mr. Chairman,
15 Commissioner Moore speaking. It seems to me that
16 the point Commissioner Pernell is raising is a
17 good one, and ought to simply be incorporated in
18 the conditions, that the general contractor have a
19 valid California contractors license.

20 We wouldn't have someone working on a
21 state building, we wouldn't have someone working
22 on a public edifice, a bridge or a building of
23 some kind in the state without the benefit of a
24 California contractors license. Seems to me
25 that's pretty pro forma.

1 MR. HAMMONDS: We would certainly accept
2 that condition.

3 COMMISSIONER PERNELL: Thank you. Thank
4 you, Mr. Chairman. Thank you, Commissioner Moore.

5 COMMISSIONER LAURIE: Any other
6 questions of the applicant at this point? Thank
7 you.

8 We've already heard from Ms. Dean. I'll
9 call on CURE. Mr. Wolfe.

10 MR. WOLFE: Thank you, good morning.
11 Mark Wolfe here for CURE.

12 First I want to express my thanks to Mr.
13 Shean in particular for the hard work he put into
14 this late last night. And I am certainly more
15 than happy to stipulate for the record that I
16 consider our comments to have been considered and
17 responded to by the Committee.

18 COMMISSIONER LAURIE: Thank you.

19 MR. WOLFE: For the benefit of
20 Commissioners, other than Commissioner Laurie, and
21 I apologize to Commissioner Laurie if he's already
22 heard this, I do want to give a little bit of
23 background of how we got to where we are today.

24 When the PDOC was issued by the Air
25 District back in late August, early September, it

1 was evident to us, and we believe it was also
2 evident to EPA that the project, as proposed, was
3 going to have a net emissions increase that
4 exceeded federal PSD significance thresholds. But
5 that the District was not going to require a PSD
6 analysis.

7 We raised these concerns in our
8 comments. EPA Region IX raised virtually
9 identical concerns in its comments. And the
10 result was when the FDOC came out a couple of week
11 ago, caps had been imposed on project emissions
12 limits to keep them below those thresholds.

13 But, of course, the devil is in the
14 details, as it always is. And the concern was,
15 okay, we have these new caps, but how are they
16 going to be enforced. Because an emissions limit
17 that is not enforceable is no emissions limit at
18 all.

19 From our view, as we said in our
20 comments, there are really two prongs to the
21 question of enforceability. The first is how does
22 the enforcing agency determine on a day-to-day
23 basis or a month-to-month basis whether or not
24 compliance is actually being satisfied. How do
25 you measure emissions and compare them to the cap.

1 And then second, what is the
2 consequence. What happens from a regulatory
3 standpoint in the event that compliance is not
4 demonstrated.

5 We think vis-a-vis the second prong,
6 what is the consequence that this new revised
7 condition AQ19H goes a very long way towards
8 satisfying that, at least vis-a-vis PM10. That's
9 been specified and we support that condition and
10 are grateful for it.

11 But the first prong remains problematic.
12 We believe that the Clean Air Act, as interpreted
13 by EPA and published in various EPA guidance
14 documents, requires that a fairly explicit
15 statement of how compliance is going to be
16 determined and measured must be specified in the
17 permit.

18 We noted on the 17th when we were here
19 last time that Region IX had sent two letters.
20 One to Mr. Caswell, the Project Manager here, and
21 one to the District.

22 The first letter said that Region IX in
23 general had no problems with the Commission
24 licensing this project. The second letter,
25 however, to the District, said essentially the

1 same thing, but articulated in very clear language
2 concerns over this issue, that the methodology for
3 assuring compliance was not adequately specified.

4 EPA Region IX's conclusion was that
5 could be addressed in the Title 5 permit process
6 that was forthcoming.

7 As we explained at the hearing yesterday
8 we think that the Commission needs to find that
9 those specifications are clear now. And that it
10 would not be appropriate to make a finding of
11 compliance with the federal LORS without it in the
12 permit now.

13 Nevertheless, we do understand that in
14 the normal course of events these specifications
15 will be adopted in the Title 5 permit.

16 One problem is that at the time EPA sent
17 this letter we believe that they were under the
18 impression that the Title 5 was imminent, that it
19 was going to come out later this year. And, in
20 fact, we found out that it's probably not going to
21 be issued until next August.

22 COMMISSIONER LAURIE: Mr. Wolfe, for
23 members of the general audience, can you describe
24 what the Title 5 permit is, please.

25 MR. WOLFE: The Title 5 permit is

1 essentially one permit that covers all sources of
2 air pollutants from the one major source, which in
3 this case would be the Benecia Refinery. And so
4 to the extent that there are several sources
5 there, that Title 5 is going to not only specify
6 the emissions limits, but also go into that
7 additional detail and specify how they're going to
8 be monitored and complied with.

9 So, that was essentially the reason why
10 we proposed this additional condition which is
11 that prior to the construction of phase two of the
12 project, the Title 5 process be complete.

13 We believe that the EPA letter
14 essentially states that requirements that must be
15 in the permit now are not there now. In EPA's
16 view that can be corrected in the Title 5 permit,
17 we respectfully disagree. But at a minimum we
18 think it's appropriate for this Commission, in
19 order to demonstrate some support for a finding of
20 federal LORS consistency now, state very clearly
21 that this Title 5 process has to occur. It has to
22 occur soon. And it has to provide this condition
23 in order to provide the necessary impetus, I would
24 say, for the applicant to cooperate with the
25 District and get the Title 5 issued on a timely

1 basis.

2 So, in conclusion, all of the proposed
3 changes that Mr. Shean identified we support.
4 Particularly we support the new language in the
5 adoption order. We don't think it's appropriate
6 to license this project under the four-month
7 process at all. Primarily because the PMPD before
8 you makes no mention of that process anywhere, and
9 contains no findings or analysis to support the
10 findings that would need to be made for compliance
11 there. And we would have a serious problem if the
12 Commission were to adopt the project under the
13 four-month process without any language in the
14 PMPD to that effect.

15 So we think that the language in the
16 proposed changes to the adoption order should
17 stand.

18 So, the only addition that we would urge
19 you to incorporate is the proposed change on the
20 last page of the document that Mr. Shean
21 circulated to you, which is to insert the
22 condition that prior to the commencement of
23 construction on phase two, the project owner shall
24 have submitted a copy of the final valid Title 5
25 for the entire refinery.

1 Thank you very much.

2 COMMISSIONER LAURIE: Thank you, Mr.

3 Wolfe. Questions of Mr. Wolfe?

4 COMMISSIONER PERNELL: Mr. Chairman, Mr.

5 Wolfe, Title 5, that's a federal permit.

6 MR. WOLFE: That's correct, but the Bay
7 Area Air Quality Management District has been
8 delegated the authority to issue it.

9 COMMISSIONER PERNELL: Right, but it's a
10 federal permit.

11 MR. WOLFE: That's correct.

12 COMMISSIONER PERNELL: And you've
13 indicated that you think that it would be approved
14 anyway.

15 MR. WOLFE: I believe, at some point in
16 the future the facility will obtain a Title 5
17 permit, yes.

18 COMMISSIONER PERNELL: And so I'm a
19 little unclear on why you think they need it now,
20 if they're going to get it eventually, given the
21 fact that we're trying to get generation up for
22 next year. I'm not following your rationale as to
23 why we should demand or suggest that they have it
24 now.

25 MR. WOLFE: Well, let me be clear about

1 what we're asking first. We're asking that the
2 Title 5 be obtained prior to construction of phase
3 two. So phase one, the first 51 megawatts would
4 go forward imminently. I mean it's only before
5 they begin construction on the second 51 megawatts
6 that they would need to show that they've obtained
7 the Title 5.

8 And the reason we want that is again we
9 believe, and we also believe EPA believes, that
10 there are deficiencies in the current permit,
11 namely the absence of clear specifications of how
12 the caps that are there -- and let me be clear
13 here -- those caps have been imposed to evade
14 federal PSD review. If those caps are there for
15 the purpose of evading a regulatory requirement,
16 we believe the need to be crystal clear on how
17 those are going to be enforced and monitored is of
18 paramount importance.

19 Those aren't specified now. We concur
20 that the Title 5 process is an appropriate vehicle
21 to develop, educate and present to the public what
22 those methodologies are going to be. And we think
23 it's critical that we have those locked in before
24 construction of phase two.

25 Otherwise, we don't know when the Title

1 5 will come. Maybe it will come next year. But
2 maybe it would take three years. And if we're
3 relying on the Title 5 to correct a current
4 deficiency, I think we need to be clear that that
5 has to be corrected sooner rather than later.

6 COMMISSIONER PERNELL: That's all I
7 have, Mr. Chairman.

8 COMMISSIONER LAURIE: Thank you. Any
9 additional questions for Mr. Wolfe? None. Thank
10 you, sir.

11 MR. WOLFE: Thank you.

12 COMMISSIONER LAURIE: Let me ask first
13 staff, and then applicant, to respond to Mr.
14 Wolfe's comments if any you have.

15 MR. KRAMER: Well, the Title 5 permit
16 is, in this case, --

17 COMMISSIONER LAURIE: Paul, can you
18 identify yourself for the record, please.

19 MR. KRAMER: Paul Kramer, Staff Counsel.
20 In this case at yesterday's hearing the witness
21 from the Air District told us that the same
22 analysis that went into the preparation of the
23 conditions that are before you on air quality is
24 going to be applied to produce identical
25 conditions in the Title 5 permit.

1 He talked about other cases where there
2 were older conditions and they needed some
3 updating. But he said this is not one of those.

4 So I think it's an elevation of -- on
5 one hand it's an elevation of form over substance
6 to argue that you need to wait for a Title 5
7 permit in order to let phase two begin to
8 construct. There would be no difference in the
9 quality of the analysis.

10 Part of this, I think, is an argument
11 over where the condition, or these standards for
12 measuring and monitoring need to be. The District
13 has a manual. They've admitted that not every
14 pollutant currently has a specified test method,
15 but they have a process in which they sit down
16 with the applicant and decide what the best way to
17 measure those individual pollutants is. And they
18 agree on a monitoring plan, and they implement it.

19 We just don't think it's appropriate to
20 wait for the Title 5 permit to hold up either
21 phase of this.

22 And I think there's a logical problem
23 with the argument, too. Presumably if you need a
24 Title 5 permit you need it for both phases. It's
25 not clear to me why one phase can go forward,

1 unless it's some sort of emergency argument.

2 So I think it's not necessary, and it
3 is, as Commissioner Pernell pointed out, a federal
4 permit that is, that normally occurs in a whole
5 different track than the process that we're
6 engaged in here.

7 COMMISSIONER LAURIE: Thank you. Ms.
8 Nardi, any comment?

9 MS. NARDI: Just very few, but let me
10 say a couple of things here. I think Mr. Kramer
11 and Mr. Shean very capably explained why the
12 Commission Staff doesn't feel that it's necessary
13 to include this condition. We don't think it's
14 necessary, either.

15 But I'd like to just address a couple of
16 comments that were made. Mr. Wolfe said that this
17 permit doesn't comply with federal law. I would
18 very respectfully suggest to you that the federal
19 EPA is capable of making that determination. And
20 they've sent you a letter saying that they have no
21 objections to the approval of this AFC. And so I
22 think that as to federal law compliance, the
23 federal agency is satisfied.

24 The second issue was whether the permit
25 is practically enforceable. And we spent quite a

1 bit of time yesterday at the evidentiary hearing
2 discussing all the details. I won't go back
3 through them.

4 But the Air District is very satisfied
5 that its inspectors do have practical objective
6 ways of measuring compliance with this permit and
7 enforcing it against the Refinery.

8 So for all those reasons we don't feel
9 that we need to include this additional condition.

10 COMMISSIONER LAURIE: Thank you. One
11 moment, Mr. Shean, I've got to finish the public
12 comment. On the phone we have Mr. Littneker.
13 Sir, are you on the phone? You wish to comment at
14 this time? Mr. Littneker?

15 MS. MENDONCA: He's hung up.

16 COMMISSIONER LAURIE: Mr. Littneker is
17 not available. Additional public comment? Any
18 member of the audience wish to comment on the item
19 currently before the Commission?

20 Seeing none, bring it back to the
21 Commission. Mr. Shean, I'd ask you to summarize
22 especially in regards to please provide a brief
23 summary of the proposed modification to the
24 conditions. Don't go through the whole thing all
25 over again.

1 But then also comment and clarify, for
2 the purposes of the record, whether it is the
3 recommendation, and I'd ask Mr. Blees to comment
4 on behalf of the General Counsel, as well, it's
5 the recommendation to improve this project under
6 the 12-month process, under the four-month
7 process, or both.

8 And what specific findings, if any, have
9 to be made in regards to one or the other. So
10 that any reviewing body understands what it is
11 that we have accomplished.

12 HEARING OFFICER SHEAN: All right. With
13 respect to the amendments to the revised Presiding
14 Member's Proposed Decision, if I understand
15 correctly, in response to Commissioner Pernell,
16 the applicant has agree that some condition
17 requiring the project owner to require its
18 contractors and subcontractors to possess a
19 license required to do business in the State of
20 California. They've agreed to that. And the
21 language I have in mind suggests something exactly
22 like that.

23 And that in addition -- and that can be
24 incorporated into sociol. And that the only
25 addition to the verifications would be that in

1 addition to the contracts that they have onsite
2 copies of any required licenses. That essentially
3 encapsulates all of the proposed substantive
4 amendments to the revised Presiding Member's
5 Proposed Decision.

6 My recommendation -- I believe you have
7 three options before you, and my recommendation to
8 you is that you adopt this as a 12-month
9 proceeding. That it has reverted from its
10 original four-month status. That under the
11 adoption order that's found here, the paragraph at
12 the bottom of the page will capture the shortening
13 of time for any event that took place in the four-
14 month element of the process.

15 I don't believe that there is any basis
16 for any participant in the proceeding to assert
17 that they have not had their due process notice
18 and meaningful opportunity to be heard.

19 And in addition to which all of the
20 elements of the certified regulatory program that
21 we have here at the Commission, which is a 30-day
22 review period on the Presiding Member's Proposed
23 Decision, and a 15-day comment period on the
24 revised Presiding Member's Proposed Decision have
25 been accomplished so that we have satisfied all

1 the public comment elements of CEQA.

2 And that's my recommendation.

3 COMMISSIONER LAURIE: Thank you. Mr.
4 Blees, do you have any comment on behalf of the
5 General Counsel's Office?

6 MR. BLEES: Yes, thank you, Commissioner
7 Laurie.

8 First I want to make it clear that what
9 I'm going to be saying on behalf of the Chief
10 Counsel's Office goes only to the legal
11 considerations involved. It does not extend to
12 considerations such as when the rains might come
13 or continue the general desire of the Commission
14 or willingness of the Commission to suspend
15 statutory requirements and so on.

16 COMMISSIONER LAURIE: Okay, before you
17 offer comment, Mr. Shean made comment earlier
18 about a General Counsel memorandum. I don't want
19 to talk about that at all.

20 The Commission has been advised and has
21 some understanding of those issues, and I don't
22 think we have to repeat that.

23 So, to the extent that you have
24 additional comments we would like to hear those.
25 There's no need to summarize your recommendations

1 to us at this point unless the individual
2 Commissioners desire more input.

3 Let me ask you one question. In order
4 to approve this project under the four-month
5 process, do we need to make any waiver findings as
6 provided for in the executive order. And, Mr.
7 Shean, do you have any thoughts about that one,
8 too? It's my understanding that it is not
9 proposed that we make waiver findings, is that
10 correct?

11 HEARING OFFICER SHEAN: This is a moving
12 target, Commissioner. My original understanding
13 of the staff's position, and the one that they had
14 stated in their staff assessment, was that in
15 order for this project to be approved pursuant to
16 Public Resources 25552, that it was necessary,
17 since two of the major findings could not be made
18 in the affirmative, that dealing with a
19 modification of a major source, and the other
20 being a contract for skilled labor, that the
21 Commission waive that, using the authority of one
22 of the Governor's Executive Orders.

23 And beyond that I have not been
24 informed.

25 COMMISSIONER LAURIE: Staff, we need

1 clarification, please. Is it the recommendation
2 that we adopt waiver findings under the four-month
3 process? And if so, what are those specifically?

4 MR. KRAMER: Specifically, yes, we
5 recommended that for the last hearing, and we
6 remain making that recommendation.

7 The findings were provided in the brief
8 that we filed on October 9th; there are seven
9 special findings. They are revisions to special
10 findings which were first proposed in the
11 executive summary of the staff assessment.

12 And to summarize those they waive the
13 requirement that it not be a modification to a
14 major source; and also they propose to waive the
15 requirement as to phase two, that a contract be in
16 place for skilled labor for construction,
17 operation and maintenance.

18 An alternative would be to waive the
19 contracting requirement entirely if the Commission
20 wishes to approve the project as a four-month
21 project, but is not convinced that the contract
22 and the evidence that you've been provided
23 supports a finding that they do have a contract as
24 to phase one.

25 COMMISSIONER LAURIE: Okay, well,

1 unfortunately with those special findings I'm not
2 sure if all of -- certainly the Commissioners on
3 the phone do not have those in front of them, and
4 we need to, if those are recommended we need to
5 read those into the record. So we need them.

6 MS. NARDI: Commissioner Laurie.

7 COMMISSIONER LAURIE: Yes, ma'am.

8 MS. NARDI: We had recommended the
9 adoption of the staff findings, and so I simply
10 have them typed up if they needed to be handed
11 around. And so I actually do have hard copies of
12 them if you'd like to look at them.

13 They are in the staff -- the prior staff
14 brief, and I made a separate copy of them.

15 COMMISSIONER LAURIE: Yes, could you
16 help distribute those at least to the
17 Commissioners, please.

18 COMMISSIONER PERNELL: Question, Mr.
19 Chairman.

20 COMMISSIONER LAURIE: Commissioner
21 Pernell.

22 COMMISSIONER PERNELL: If -- and this is
23 to staff, if you're suggesting that we waive a
24 number of -- at least two of the provisions under
25 the formal process. And based on the information

1 before us that has been presented by applicant
2 that has suggested that they will have skilled
3 labor on the project; and based on the further
4 conditions that they have accepted, do you still
5 think we need to waive that provision?

6 MR. KRAMER: Well, it's a judgment call
7 that ultimately you have to make. The statute --
8 let me let Valero take their first crack at it,
9 and I'll read the statute for a moment.

10 MS. NARDI: Yes -- excuse me. May I go
11 ahead?

12 COMMISSIONER LAURIE: I'm sorry, were
13 you done?

14 MR. KRAMER: I was going to defer to Ms.
15 Nardi for a minute.

16 COMMISSIONER PERNELL: He's -- sounds
17 like he's punting on that one.

18 MS. NARDI: Let me try and explain it.
19 This is what Mr. Shean handed out this morning and
20 it's sort of door number one. This would be an
21 option where you process this as a 12-month
22 project, making some special findings that you
23 expedited the deadlines, but it would be the 12-
24 month approach. And that's what I believe Mr.
25 Shean has suggested to you.

1 What I just handed around and what
2 Valero recommends, although we would find door
3 number one acceptable, but door number two is to
4 process this as a four-month project. And if you
5 elected to process it as a four-month project, you
6 would have to make certain special findings under
7 25552. And as Mr. Kramer has pointed out you'd
8 have to waive two of the statutory conditions of
9 25552.

10 So, as I understand it, it is your
11 decision to decide whether you want to do it this
12 way or this way. These are the two options on the
13 table.

14 COMMISSIONER LAURIE: Okay, --

15 COMMISSIONER PERNELL: And so my
16 question stands --

17 COMMISSIONER MOORE: Mr. Chairman, Mr.
18 Chairman --

19 COMMISSIONER LAURIE: Chairman Keese.

20 CHAIRMAN KEESE: Did I hear the
21 applicant suggest that they find the 12-month
22 process as we laid out with all the conditions
23 that Mr. Shean listed acceptable?

24 COMMISSIONER LAURIE: I think we heard
25 the applicant indicate that their preference is

1 the four-month process with special findings.

2 CHAIRMAN KEESE: But that the 12-month,
3 under the conditions laid out by Mr. Shean, is
4 acceptable?

5 MS. NARDI: That is correct. What I
6 meant to say, if I wasn't clear, is that we would
7 prefer that this be processed as a four-month
8 project with the special findings that were in the
9 October 9 staff report.

10 But, if you decide in your discretion,
11 to process it as a 12-month, we have no objection
12 to these specific findings as Mr. Shean has made
13 some modest amendments to them. That's correct.

14 CHAIRMAN KEESE: Thank you.

15 COMMISSIONER LAURIE: Thank you.

16 MR. KRAMER: If I may --

17 COMMISSIONER LAURIE: Mr. Wolfe.

18 MR. WOLFE: Thank you. Very quickly, we
19 also have no objection, as I said, to processing
20 it under the 12-month process. This revised final
21 PMPD that's before you does not contain any of
22 these findings, does not point to any evidence in
23 the record, does not contain any rationale to
24 support a waiver of any of the requirements
25 because of the executive order.

1 Had any of that information been in this
2 document, we, I can assure you, would have
3 submitted comments on that, and would have brought
4 that up yesterday in the Committee Conference, and
5 would have submitted probably an extensive brief
6 as to why we thought the proposed findings were
7 inappropriate or incorrect.

8 So if the Commission is inclined, over
9 the acquiescence of what appears to be all of the
10 parties, to approve this under the 12-month
11 process, then I would respectfully request that we
12 get another 15 days to comment on this.

13 CHAIRMAN KEESE: You mean four months.

14 MR. WOLFE: Sorry?

15 SPEAKER: You misspoke. Four months.

16 MR. WOLFE: Thank you.

17 MR. KRAMER: Mr. Chairman.

18 COMMISSIONER ROSENFELD: You'd better
19 say it again, I'm sorry.

20 MR. WOLFE: Sorry?

21 COMMISSIONER ROSENFELD: There was some
22 confusion. I didn't understand. Could you repeat
23 your sentence?

24 MR. WOLFE: If the Commission is
25 inclined to certify this project under the four-

1 month process, over what I understand to be the
2 acquiescence of all of the parties to do so under
3 the 12-month process, then I would respectfully
4 request that a revised PMPD containing these new
5 findings, containing a rationale supporting them,
6 and pointing to evidence in the record in support,
7 be circulated for 15 days so that we have an
8 opportunity to comment on why we think that's not
9 appropriate.

10 COMMISSIONER LAURIE: Thank you, Mr.
11 Wolfe.

12 COMMISSIONER MOORE: Mr. Chairman,
13 unless I miss my guess, what I'm hearing is a
14 general concurrence that Mr. Shean's
15 recommendation is the right one.

16 Can someone outline for me the
17 disagreement with that? What's the problem with
18 what Mr. Shean has recommended?

19 COMMISSIONER LAURIE: Thank you,
20 Commissioner Moore. Let me ask staff and
21 applicant, both of whom are, quote, favoring the
22 four-month process, as to what objection there is
23 legally, procedurally or otherwise to the 12-month
24 process with the proposed findings by Mr. Shean.

25 Let me ask staff first.

1 MR. KRAMER: Talk about being on the
2 spot.

3 COMMISSIONER LAURIE: Well, no, I mean
4 it's not being on the spot. If you have --

5 MR. KRAMER: No, I understand your
6 question.

7 COMMISSIONER LAURIE: -- honest feelings
8 about the subject, simply express it.

9 MR. KRAMER: Well, I'll summarize what's
10 been said in both our briefs and Valero's briefs
11 on this point in the past.

12 A couple briefs ago we described what we
13 felt were the 12-month process rules that were not
14 complied with up to that point. Because the
15 staff, from day one this has been presented to the
16 Commission as a four-month, the data adequacy as a
17 four-month project.

18 Staff prepared a schedule, published it
19 with their issue identification report. That's a
20 schedule that they've been operating on, the
21 public has been operating on to this point.

22 The delays were basically because the
23 Air District could not process its permit as
24 quickly as we had projected.

25 And we came to the end and the first

1 PMPD suggested that this was not going to be a
2 four-month process. However, it didn't deal with
3 those other lingering procedural questions.

4 Now, we have since found and it's been
5 recommended that you apply the Presiding Member's
6 authority to shorten some of those deadlines. But
7 because this has been a four-month process in our
8 minds from day one, we would like to see it
9 approved that way if the Commission finds that it
10 can make the findings to do so.

11 CHAIRMAN KEESE: Mr. Chairman, my
12 question I guess to staff would be would they have
13 the same position as the applicant did, that while
14 they prefer the four, they can acquiesce to the
15 12?

16 MR. KRAMER: Yes, we do share that
17 position.

18 COMMISSIONER LAURIE: Commissioner
19 Pernell.

20 COMMISSIONER PERNELL: Mr. Chairman, my
21 I guess question would be to the applicant in
22 terms of the construction schedule. What would
23 that do by us considering the 12-month process?
24 And given the fact that one of the reasons for the
25 four-month process is to insure that we have some

1 additional generation in '02.

2 So I would turn to you in terms of your
3 construction schedule, and ask what would that do
4 to your construction schedule.

5 MS. NARDI: I think that you can approve
6 this application in either of the two ways that
7 have been suggested, the four-month with the
8 special findings, or the 12-month with the extra
9 deadline waiving finding.

10 And we're going to be able, as I
11 understand it, to, in either case, start
12 immediately, which is our intention.

13 So I think under either approval method
14 we'll be able to get a quick start on this project
15 and get gong with it. And that's one reason,
16 Commissioner Pernell, why either would be
17 acceptable to us. We do want to start very
18 quickly.

19 COMMISSIONER PERNELL: Right, and I
20 applaud you for that. Let me just ask you, what
21 is your completion date for construction if you
22 start very quickly?

23 MS. NARDI: Let me let Mr. Hammonds
24 answer that question.

25 MR. HAMMONDS: We're looking towards an

1 April completion, and we're hoping to break ground
2 on Friday.

3 COMMISSIONER PERNELL: April of '02?

4 MR. HAMMONDS: That's correct. Of phase
5 one, sir.

6 COMMISSIONER PERNELL: Phase one.

7 MR. HAMMONDS: Phase two by the end of
8 the year, 2002.

9 COMMISSIONER PERNELL: All right, and my
10 next question goes to the 12-month process, even
11 though the applicant had said that they were
12 completed by April '02 for phase one, and by the
13 end of the year for phase two, if we go to the 12-
14 month process, and for some reason they can't do
15 that, or choose not to, or the market changes or
16 whatever, is there any recourse for this
17 Commission in that situation?

18 MR. KRAMER: If I understand your
19 question you're asking would they have to complete
20 the project by the end of next year if they --

21 COMMISSIONER PERNELL: Well, they have
22 to complete --

23 MR. KRAMER: -- were approved as a 12-
24 month?

25 COMMISSIONER PERNELL: That's correct.

1 Which is what they would have to do under the
2 four-month process.

3 MR. KRAMER: Right, under the four-month
4 they would. But under the 12-month the completion
5 date would go back to the norm, which I believe is
6 five years. And I think that's in the
7 regulations.

8 COMMISSIONER PERNELL: Five years?

9 MR. KRAMER: Right. And issues such as
10 contracting and all that would become irrelevant.

11 COMMISSIONER MOORE: Mr. Chairman, isn't
12 it possible that we can condition, if we were to
13 approve this matter, that we could condition that
14 so that there was a construction schedule with the
15 kind of certificate that comes back to us for re-
16 view at the end of calendar '02, for instance?

17 We have the ability to impose a
18 condition like that.

19 COMMISSIONER LAURIE: Thank you,
20 Commissioner Moore. We know what the regs say.
21 The regs provide for five years. But the
22 conditions are really in the form of an agreement.
23 If an applicant is prepared to accept such a
24 condition, in my view, it would be permissible.

25 So the Commission will consider that and

1 would ask the applicant whether they would accept,
2 as a condition, a construction schedule consistent
3 and commensurate with the four-month process.

4 And so let me pose that question to the
5 applicant at this time.

6 MR. HAMMONDS: The four-month process
7 says that we would be completing our project by
8 year end 2002. And we've been consistent in
9 advising the Commission that at this time we have
10 not gotten firm financing arranged for the second
11 phase of this project.

12 Upon approval of a permit then that may
13 be forthcoming. We aren't sure where that's going
14 to go.

15 As a constructor and an operator we
16 would certainly like to have all the flexibility
17 we could have regardless of the situation. So if
18 this were to be approved under a 12-month process,
19 we would prefer to have the full allotment of
20 time, the five years, if the Commission sees its
21 way to allow that.

22 However, approval and progressing is
23 foremost in our mind. And if the Commission
24 believes that a condition limiting it that way, as
25 we would be accepting under the four-month

1 program, we would accept it.

2 COMMISSIONER LAURIE: Thank you, Mr.
3 Hammonds.

4 COMMISSIONER MOORE: Mr. Chairman, I
5 have to just say that I'm pretty uncomfortable
6 with that last comment. I don't like being put in
7 the middle, I don't like being used one side
8 against the other, either staff against us, or
9 applicant against us.

10 If the applicant was succoring us for a
11 four-month process, that meant that they were
12 absolutely committed to a timeline that would have
13 that plant complete by the end of '02.

14 And to offer a kind of a disingenuous
15 comment at the end it says, well, if we got the
16 12-month process approved, well, then we'd like
17 the five years, when the other comment is we're
18 prepared to comply with the shortened timeline, is
19 gaming the system. I'm not prepared to go there.

20 COMMISSIONER LAURIE: Okay, thank you,
21 Commissioner Moore.

22 Any additional questions from the
23 Commissioners? Any additional public comment at
24 this point?

25 COMMISSIONER PERNELL: Mr. Chairman.

1 COMMISSIONER LAURIE: Commissioner
2 Pernell.

3 COMMISSIONER PERNELL: Mr. Chairman,
4 just on the -- I would be interested to know
5 whether the applicant has a response to
6 Commissioner Moore's concern. And I think it's a
7 genuine one, in that if you're prepared to move
8 forward on the four-month process and complete it
9 in time, that would suggest that the necessary
10 financing is in order.

11 We all want flexibility. I certainly
12 would love you to have this plant up next month so
13 California can take advantage of the additional
14 megawatts. But that's not the case, and we
15 understand that.

16 So, I certainly would like a response to
17 Commissioner Moore's comments.

18 MR. HAMMONDS: This is Sam Hammonds
19 again with Valero. I'm sorry if I've given an
20 impression that we're gaming the system here. We
21 have been proposing a four-month program and we
22 are very eager to move forward.

23 However, we have been consistently
24 making it clear that we do not have firm financing
25 for the second phase of this project. We are

1 prepared to go with a limitation that completion
2 of phase one and phase two must be complete by the
3 end of 2002, which is the four-month program.

4 And if that's the Commission's desire,
5 that's the condition we'll take.

6 COMMISSIONER MOORE: Mr. Chairman, I'm
7 prepared to offer a motion for approval with the
8 condition modified as just suggested by the
9 applicant.

10 COMMISSIONER LAURIE: Can you give me a
11 moment, first, Commissioner Moore?

12 COMMISSIONER MOORE: Yes.

13 COMMISSIONER LAURIE: Because there will
14 be separate findings required for the 12-month
15 process, which does not require the CEC Staff
16 recommended findings set forth in staff document
17 dated October 9th. That's for the four-month
18 process.

19 For the 12-month process it is
20 recommended that additional language be added
21 including a good cause finding as set forth in the
22 staff memoranda, good cause being to establish the
23 shortened time period.

24 So you can do one or the other, or I
25 suppose, both, as they are not necessarily

1 mutually exclusive.

2 COMMISSIONER MOORE: It seems to me, Mr.
3 Chairman, that both of those were included in the
4 alternative offered by Mr. Shean. If I'm
5 mistaken, then please let me know.

6 COMMISSIONER LAURIE: Mr. Shean, if you
7 can come forth. I don't believe so. I think Mr.
8 Shean's recommendation was to propose findings for
9 the 12-month process, is that correct? Or am I
10 mistaken?

11 HEARING OFFICER SHEAN: That's correct.
12 But given, to try to encapsulate this perhaps, so
13 we can get to the point of a motion and a vote,
14 would be that the amendments that we've discussed
15 earlier, which are the condition AQ19H, the sociol
16 with the addition of the contractors license, and
17 the adoption order be supplemented by what was
18 included in the materials distributed by the
19 applicant, which is generally called Gen10, which
20 is that language requiring that they have these
21 facilities on line by the end of 2002.

22 And let me just say, we need, at least
23 in my view, to not miss the forest for the trees.
24 Right now we have our nose right up against the
25 Valero tree, but if we step back a little bit we

1 need to essentially see that with the pending and
2 soon-to-be-filed four-month cases, if they, for
3 some reason, either substantively or procedurally,
4 cannot remain in a four-month process, we need to
5 develop, and I believe we have, the outlines of an
6 integrated plan to deal with these if they fall
7 out of the four-month.

8 Which would be that you can do that, the
9 timelines that have already been accomplished are
10 shortened by order of the Commission. And that so
11 long as we continue to give you the expedited
12 processing, which you say you need to get online
13 by the end of 2002, then you should be prepared to
14 accept a condition that says you shall be.

15 And that would be what I would offer as
16 the position of the Committee, if Commissioner
17 Rosenfeld would agree, and if it's appropriate to
18 make a motion based upon that. I'll leave that to
19 the Commissioners.

20 COMMISSIONER LAURIE: Thank you, Mr.
21 Shean. Commissioner Moore.

22 COMMISSIONER MOORE: Well, Mr. Chairman,
23 I would simply add to that that Mr. Shean just put
24 on the table, that when we have imposed a
25 construction schedule as a part of any kind of

1 finding or approval, we've also included in that a
2 clause that has the phrase in it "for good cause"
3 so that something like that is not -- that kind of
4 limit is not automatic, but, in fact, triggers a
5 review at the Commission to find out whether or
6 not the causes of a delay are beyond the
7 applicant's control.

8 And I think that that's an appropriate
9 addition. I mean I'm not suggesting that this is
10 a hard-and-fast rule. But it seems to me that the
11 five-year timeline, which is what is incorporated
12 in the one-year permit, it's really not realistic
13 for the kind of project we're considering here.

14 And so I am still prepared to make a
15 motion for approval per the revised PMPD, but I'll
16 waive action on that until you outline what
17 motions ought to properly come to the floor.

18 COMMISSIONER LAURIE: Thank you.

19 MR. KRAMER: Mr. Chairman.

20 COMMISSIONER LAURIE: Yes, sir.

21 MR. KRAMER: I would just point out that
22 condition Gen10 was borrowed from the peaker
23 conditions, and it does have the notion that there
24 will be a hearing and the possibility of the grant
25 of additional time if good cause is shown.

1 So I believe that answers Commissioner
2 Moore's question.

3 COMMISSIONER LAURIE: Thank you.
4 Commissioner Pernell.

5 COMMISSIONER PERNELL: I was just
6 recognizing another --

7 MR. JOHNSON: Could I make a point of
8 clarification?

9 COMMISSIONER PERNELL: -- comment.

10 COMMISSIONER LAURIE: Mr. Johnson.

11 MR. JOHNSON: My name is Roger Johnson,
12 Siting Office Manager. The discussion around the
13 five-year, typically on a 12-month AFC applicants
14 are required to start construction within five
15 years. However, currently we're under executive
16 order that limits that to one year. And there's a
17 condition in this particular proposed decision
18 that says the applicant has to, within 30 days,
19 agree to a schedule that shows that they will
20 start construction within one year.

21 COMMISSIONER LAURIE: Okay. Thank you.
22 Bring it back to the Commission. Again, I would
23 suggest that if the Commission determines to
24 approve this project, a motion would be in order
25 to either a) approve the project under the 12-

1 month process, which would incorporate the
2 additional language in the adoption order, which,
3 if adopted establishes good cause for the
4 shortened time period.

5 Alternative b) is to adopt the project
6 under the four-month time period which would
7 require a waiver of statutory criteria, and
8 require the adoption of special findings 1 through
9 7, along with Gen9 and Gen10.

10 Or, I guess, alternative c) is to adopt
11 both.

12 I want to make it clear for the record
13 that it is, I believe -- well, let me have a
14 motion first --

15 COMMISSIONER MOORE: Well, Mr. Chairman,
16 I'm going to then move as you've outlined
17 alternative a) for approval of the project, as
18 modified.

19 COMMISSIONER LAURIE: Is there a second
20 to Commissioner Moore's motion?

21 COMMISSIONER ROSENFELD: Second.

22 COMMISSIONER LAURIE: It's been moved
23 and seconded to adopt this project under the 12-
24 month process. And the motion, Commissioner
25 Moore, includes the proposed modification of

1 conditions regarding condition AQ20, as described,
2 the requirement to utilize skilled labor to
3 construct, operate and maintain the facility; the
4 requirement that the contractor have a valid
5 California contractors license; and a requirement
6 that construction be -- or that the project be
7 online by year end 2002.

8 Your motion also would include a finding
9 of good cause for the short time period pursuant
10 to section 1203 -- is that Government Code? What
11 is that, Jonathan?

12 COMMISSIONER MOORE: Are you referring
13 to the Governor's Executive Order?

14 HEARING OFFICER SHEAN: It's Commission
15 Regulations section 1203.

16 COMMISSIONER LAURIE: Yeah, okay, Title
17 20, section 1203, allowing the Presiding Member or
18 the Chairman to shorten time periods. And that
19 would be appropriate for a full Commission
20 finding.

21 Does that encapsulate your motion,
22 Commissioner Moore?

23 COMMISSIONER MOORE: Yes.

24 COMMISSIONER LAURIE: And Commissioner
25 Rosenfeld?

1 COMMISSIONER ROSENFELD: Yes.

2 COMMISSIONER PERNELL: Mr. Chairman.

3 COMMISSIONER LAURIE: Commissioner
4 Pernell.

5 COMMISSIONER PERNELL: This is
6 Commissioner Pernell. I would just add on the
7 construction schedule that the December timeline
8 is for completion of phase one and two.

9 COMMISSIONER MOORE: That was
10 understood.

11 COMMISSIONER LAURIE: That is the
12 Commission's understanding.

13 COMMISSIONER PERNELL: Okay.

14 COMMISSIONER LAURIE: Any additional
15 questions? All in favor of the motion please say
16 aye.

17 (Ayes.)

18 COMMISSIONER LAURIE: Opposed, no?
19 Motion passes unanimously.

20 Thank you very much, ladies and
21 gentlemen.

22 COMMISSIONER PERNELL: Thank you.

23 MS. NARDI: Thank you very much.

24 COMMISSIONER LAURIE: Commissioners
25 Keese and Moore, are we going to lose you?

1 CHAIRMAN KEESE: You're losing Mr.
2 Keese.

3 COMMISSIONER MOORE: No, I'm staying
4 with you.

5 COMMISSIONER LAURIE: Okay, I guess that
6 means we can't take a break?

7 (Laughter.)

8 COMMISSIONER MOORE: Right.

9 COMMISSIONER LAURIE: Okay, fine. I
10 need to announce to the audience that we were
11 going to have -- we are going to have an executive
12 meeting, a closed session, following the meeting.
13 And it will be a closed session based upon
14 potential litigation, I believe. Thank you.

15 Moving on to item number 14. Well,
16 Commissioner Moore, let me ask you, is there a
17 particular item that you wanted to stick on for,
18 so that you could hang up and go get your bag? Or
19 did you want to do this for fun?

20 COMMISSIONER MOORE: No, I'm going to
21 stay with you through the end.

22 COMMISSIONER LAURIE: Okay.

23 COMMISSIONER PERNELL: Security
24 confiscated his bags.

25 COMMISSIONER MOORE: The security --

1 (Laughter.)

2 COMMISSIONER LAURIE: Because they are
3 going round and round.

4 Item 14, Electric Vehicle Infrastructure
5 Incentive Program. Possible approval of several
6 contracts to disencumber funds back to the South
7 Coast Air Quality Management District in
8 compliance with their original contracts. SCAQMD
9 is no longer supporting the Electric Vehicle
10 Infrastructure Incentive Program.

11 And we have item a) which is a contract
12 for \$105,000 that's been withdrawn.

13 Item d) for \$50,000, that has been
14 withdrawn.

15 Item b) is for \$20,750; item c) is for
16 \$42,689.50; e) is for \$42,250 with General Motors;
17 f) is \$47,448.20 with American Honda.

18 Call upon Ms. Ghaffari. Good morning.

19 MS. GHAFFARI: Good morning. My name is
20 Lilly Ghaffari. I work with Transportation Energy
21 Division.

22 The purpose of this project amendment
23 is, as you mentioned, to disencumber the money
24 back to South Coast Air Quality Management
25 District since their contract has been expired and

1 no longer interested to continue with this
2 program.

3 And actually this is for getting the
4 information into the contract with the car
5 manufacturers so we have a record of how much
6 money is available to them. And that's all, if
7 you have any questions --

8 COMMISSIONER PERNELL: Mr. Chairman, I
9 am familiar with this item. And I have no
10 questions. Unless there's questions from my
11 colleagues, I would like to move the item.

12 COMMISSIONER ROSENFELD: Second.

13 COMMISSIONER LAURIE: Item has been
14 moved and seconded. Any comments from the public
15 on this item? Thank you.

16 All in favor of the motion please say
17 aye.

18 (Ayes.)

19 COMMISSIONER LAURIE: Opposed? Motion
20 passes four to zero. And thank you very much.

21 COMMISSIONER PERNELL: Thank you.

22 COMMISSIONER LAURIE: Item 15, Western
23 Governors Association. This is a contract to
24 receive money for purposes of training for nuclear
25 waste shipments. And, in turn, there is a

1 contract with OES to provide monies that will be
2 basically shipped through us to OES. Ms. Byron is
3 available for questions.

4 This is a contract that has been
5 utilized before. Barbara, what's the -- are these
6 federal funds? Where does --

7 MS. BYRON: These are federal funds from
8 the U.S. Department of Energy that are given to
9 the Western Governors Association for them to
10 distribute among western states.

11 COMMISSIONER LAURIE: Thank you. I am
12 familiar with the proposed contract. It is for
13 training the state and local agencies for
14 transuranic waste nuclear shipments.

15 I would accept a motion to approve the
16 contract.

17 COMMISSIONER MOORE: Move for approval.

18 COMMISSIONER ROSENFELD: Second.

19 COMMISSIONER LAURIE: Moved and
20 seconded. Public comment?

21 All in favor please say aye.

22 (Ayes.)

23 COMMISSIONER LAURIE: Opposed? None.

24 Motion passes four to zero. Thank you, Barbara.

25 MS. BYRON: Thank you.

1 COMMISSIONER LAURIE: Item 16,
2 Rensselaer Polytechnic Institute. Possible
3 approval of contract 500-01-011 for \$150,000 for a
4 membership to the Lighting Research Center. Don,
5 good afternoon.

6 Are the Commissioners familiar with
7 this? Commissioner Pernell?

8 COMMISSIONER ROSENFELD: I'm familiar
9 with this.

10 COMMISSIONER LAURIE: Commissioner --

11 COMMISSIONER PERNELL: I do have one
12 question on that item, Mr. Chairman, and that is
13 we are working with, in terms of lighting, with
14 Lawrence Berkeley Lab, I understand. Is this an
15 overlap, or are we being -- I'm trying to
16 understand the difference between this particular
17 contract and what we're now doing with Lawrence
18 Berkeley Lab, which deals with lighting.

19 MR. AUMANN: Certainly, that's a very
20 good question. Lawrence Berkeley Laboratory is a
21 group that we're doing a lot of work with on some
22 specific activities.

23 The Lighting Research Center is
24 providing a much different kind of activity to the
25 lighting industry across the country. They are

1 providing more of a coordinated effort among a
2 variety of lamp manufacturers, luminaire
3 manufacturers and the research community.

4 The membership or partnership that we
5 have been involved with in this last year has
6 provided with us a variety of different kinds of
7 general support, as well as input into their
8 general research activities that's of a distinct
9 separate nature from LBNL.

10 In fact, we've been a member for one
11 year. And before initiating that membership last
12 year we went through the sole source justification
13 process to identify the alternative organizations
14 that may be considered for doing this sort of
15 thing, and it was well documented that the kind of
16 membership benefits that we were receiving were
17 unique in comparison to what we're getting from
18 Lawrence Berkeley National Laboratory.

19 COMMISSIONER PERNELL: All right, --

20 COMMISSIONER MOORE: Mr. Chairman.

21 COMMISSIONER LAURIE: Commissioner
22 Moore.

23 COMMISSIONER MOORE: I have a question
24 on that. My understanding when we voted for this
25 last year was that this was going to last a year;

1 that that was our commitment. And that at that
2 point we were going to return to the original
3 intent, which was to develop a long-term
4 relationship with, and strengthen the commitment
5 to Lighting Research at Lawrence.

6 And so I'm wondering, am I not
7 remembering that correctly, or have we changed our
8 mind?

9 MR. AUMANN: I'll have to admit that I
10 wasn't present a year ago. I understand some of
11 the thinking and discussion that went on at that
12 time. I can say that we have continued to expand
13 our work with Lawrence Berkeley National
14 Laboratory in areas where they have expertise, and
15 that we have been working with them in the past.

16 Similarly we are in the process of
17 expanding our relationship with the Lighting
18 Research Center to expand our research portfolio
19 in the lighting area with them, as well.

20 So I think their efforts are
21 complementary, and we're continuing to work in
22 both fronts.

23 COMMISSIONER MOORE: And how long do you
24 expect this additional commitment of money to last
25 to this organization?

1 MR. AUMANN: We are suggesting that this
2 contract be for a three-year period with an annual
3 renewal to insure that we're continuing to receive
4 the benefits that we've expected.

5 COMMISSIONER MOORE: Mr. Chairman, I'm
6 going to be prepared to support this, but I will
7 commend, and I hope that staff will take it as a
8 responsibility to bring out to future
9 Commissioners that this is annually reviewed, and
10 that we have the hometown organization, as it
11 were, that is capable of doing very dedicated and
12 very vital work for us.

13 And that we consider them as an option
14 in each annual review. And that at the three-year
15 mark that this come back and there be a
16 competitive bid that will allow Lawrence Berkeley
17 and Pomona to come in and show us what they can
18 do, as well.

19 COMMISSIONER LAURIE: Thank you,
20 Commissioner Moore. Back to the Commission.
21 Commissioner Rosenfeld.

22 COMMISSIONER ROSENFELD: I move the
23 three-year contract.

24 COMMISSIONER PERNELL: Second.

25 COMMISSIONER LAURIE: Moved and

1 seconded. Additional comments?

2 All in favor of the motion please say
3 aye.

4 (Ayes.)

5 COMMISSIONER LAURIE: Opposed? Motion
6 passes four to zero. Thank you very much.

7 MR. AUMANN: Thank you.

8 COMMISSIONER PERNELL: Okay, our next
9 item, item 18, Strategic Energy Innovations.
10 Possible approval of contract 400-00-057 for
11 \$30,000 to provide seed money to form a
12 Multifamily Energy Consortium of all utility
13 entities in California to share ideas and develop
14 a uniform method of delivering/marketing low-
15 income programs. Staff, will you brief the Board,
16 please?

17 MS. CLARK: Yes, my name is Maura Clark.
18 First for a little bit of a background, in 1999
19 the Energy Commission received a grant from the
20 Department of Energy under it's Rebuild America
21 Program, which included \$30,000 for a multifamily
22 project.

23 The multifamily sector is an under-
24 served market in California. Although many of the
25 agencies have multifamily programs for energy

1 efficiency measures, as do the utilities, the
2 municipalities, cities, counties and many
3 nonprofits, their programs are disjointed.

4 After many months of research staff
5 recommended to the Energy Efficiency Committee
6 that the state would best benefit by using the
7 \$30,000 as seed money for the Multifamily
8 Consortium similar to the collaborative for High
9 Performance Schools.

10 The goal is to bring all the
11 stakeholders together with their programs, issues,
12 barriers and solutions to form a consortium to
13 take coordinated action.

14 The seed money will provide for the
15 outreach in marketing of the consortium, and cover
16 the cost for the initial meetings to identify a
17 mission to better serve this market in energy
18 efficiency programs.

19 As with the collaborative for the High
20 Performance Schools, after these initial meetings
21 the stakeholders will contribute funding to insure
22 the consortium's sustainability, identify energy
23 efficient criteria for new construction and
24 retrofit projects, and develop marketing for
25 energy efficient appliances.

1 Thank you.

2 COMMISSIONER MOORE: Move for approval.

3 COMMISSIONER PERNELL: Is there a
4 second?

5 COMMISSIONER ROSENFELD: Second.

6 COMMISSIONER PERNELL: It's been moved
7 and seconded. On the question? Is there anyone
8 in the audience who wants to speak to this item?

9 Seeing none and hearing none, this item
10 is approved. Thank you very much.

11 MS. CLARK: Thank you.

12 COMMISSIONER MOORE: Did you skip item
13 17, Mr. Chairman?

14 COMMISSIONER LAURIE: We already did it,
15 Michal.

16 COMMISSIONER MOORE: All right.

17 COMMISSIONER PERNELL: We're now on item
18 number 19.

19 COMMISSIONER LAURIE: Let's go back
20 to -- well, I know about 10.

21 MS. SHAPIRO: 13.

22 COMMISSIONER ROSENFELD: Ten was held up
23 because we couldn't find Phil Misemer.

24 COMMISSIONER LAURIE: Okay, did we just
25 skip 13 by accident? I guess so.

1 COMMISSIONER PERNELL: I think we did.

2 COMMISSIONER LAURIE: Okay. Mr.

3 Misemer, let's go ahead.

4 COMMISSIONER PERNELL: Yeah, we're okay.

5 COMMISSIONER LAURIE: We're going to
6 take item 10. Energy Innovation Small Grant
7 Program. Consideration and possible approval of
8 nine grant projects totaling \$674,531 with the
9 PIER program funding of grants under Energy
10 Innovations Small Grant Program. Good morning.

11 MR. MISEMER: Good morning,
12 Commissioners. I apologize I wasn't here earlier
13 when my item was called. My name is Philip
14 Misemer; I'm the Manager of the Grant Program.

15 The item before you represents the ninth
16 solicitation for the Energy Innovation Small Grant
17 Program.

18 After going through our process nine
19 grants were recommended through our program and
20 technical review board with the grant program
21 administrator to you for funding.

22 These include a pretty good
23 representation across the PIER subject areas with
24 the exception of renewables. We have one in
25 industrial/agricultural; two in building end use;

1 two in environmentally preferred advanced
2 generation; three in the PIER environmental area;
3 and one in the strategic, now called the energy
4 system integration PIER subject area.

5 In this particular round the
6 Commissioners should also note that a flaw was
7 exposed in our selection process that was not
8 noted in the eight earlier rounds, which allowed
9 grants -- grant proposals that had problems in
10 their eligibility, programmatic problems, to
11 advance to scoring, and end up in a fundable
12 range.

13 One, in fact, was a transportation
14 related project that should have been screened and
15 wasn't. And another that had flaws in the
16 research approach.

17 We proposed changes to our selection and
18 scoring process, most notably allowing our program
19 and technical review board the option of
20 disqualifying grant applicants for a given set of
21 criteria. This proposed change was also reviewed
22 by legal counsel in the Energy Commission and
23 found to be sound. And has been incorporated in
24 the grant application manual for the tenth
25 solicitation round.

1 Other than that, the projects before you
2 represent excellent projects. And we anticipate
3 good results from them.

4 COMMISSIONER LAURIE: Does the
5 recommendation come through the Research and
6 Development Committee?

7 COMMISSIONER ROSENFELD: It does.

8 MR. MISEMER: Yes, the recommendation
9 does go first to the Research and Development
10 Committee.

11 COMMISSIONER LAURIE: Thank you.
12 Commissioner Rosenfeld, do you have any comments?

13 COMMISSIONER ROSENFELD: No, I'm ready
14 to move it.

15 COMMISSIONER PERNELL: Second.

16 COMMISSIONER LAURIE: Any public --

17 COMMISSIONER PERNELL: Is ready a
18 motion? Do you move?

19 COMMISSIONER LAURIE: That was a motion.
20 It's been moved and seconded. Is there any public
21 comment on the adoption of the small grant program
22 as presented? No public comment.

23 All in favor of the motion please say
24 aye.

25 (Ayes.)

1 COMMISSIONER LAURIE: Nay? The motion
2 passes four to zero. Thank you, Phil.

3 COMMISSIONER MOORE: Commissioner, just
4 one additional comment on that item, and that is
5 that I hope that the renewables section gets a
6 little more emphasis in months to come.

7 COMMISSIONER LAURIE: Thank you,
8 Commissioner Moore.

9 Item 13, Ventura County Air Pollution
10 Control District.

11 MR. MISEMER: Thank you, Commissioners.

12 COMMISSIONER LAURIE: Thank you, Phil.

13 Possible approval of contract 500-98-
14 048, amendment 1, to extend the time to September
15 30, 2002, to assist in the development of a
16 liquified compressed natural gas fueling facility.

17 Mr. Argentine, Argentine, thank you.

18 MR. ARGENTINE: Argentine.

19 COMMISSIONER LAURIE: Argentine.

20 MR. ARGENTINE: I'm Alan Argentine, and
21 I'm representing the Transportation Technology
22 Office.

23 Staff is requesting approval of a no-
24 cost time extension and amendment to the contract
25 with Ventura County Air Pollution Control District

1 to install a liquified and compressed natural gas
2 facility at the Verizon facility in Camarillo.

3 Now the reason we're asking for this
4 extension was due to the unforeseen time taken
5 between GTE and Bell Atlantic to merge. They're
6 now known as Verizon. And the reason being is
7 Verizon is where the facility is going to be.

8 We're also amending this from a CNG
9 facility to an LCNG facility. The project cost is
10 going from \$500,000 to \$640,000, but the
11 Commission will still only pay \$100,000 towards
12 the compressed natural gas equipment.

13 One of the major advantages of the LCNG
14 facility is that we're going to have two anchor
15 tenants and we're going to displace a lot more
16 petroleum fuel.

17 COMMISSIONER LAURIE: Thank you, sir.

18 COMMISSIONER MOORE: Mr. Chairman, this
19 has come to you with the recommendation of the
20 Fuels and Transportation Committee, and I would be
21 pleased to move it for approval.

22 COMMISSIONER LAURIE: Is there a second
23 on the motion?

24 COMMISSIONER ROSENFELD: Second.

25 COMMISSIONER LAURIE: Moved and

1 seconded. Public comment on the motion?

2 All in favor, please say aye.

3 (Ayes.)

4 COMMISSIONER LAURIE: Opposed? Motion
5 passes four to zero. Thank you, Alan, very much.

6 COMMISSIONER MOORE: Okay, and Mr.
7 Chairman, you are going to lose me now.

8 COMMISSIONER LAURIE: Commissioner
9 Moore, some of us lost you a long time ago.

10 (Laughter.)

11 COMMISSIONER LAURIE: Thank you, sir.

12 COMMISSIONER MOORE: Good bye.

13 COMMISSIONER LAURIE: Have a good trip.
14 Thanks.

15 Item 19, Aspen Environmental Group.
16 Possible approval of contract 700-99-014,
17 amendment 1, for \$6 million to provide temporary
18 technical assistance to review requests from
19 developers to construct energy facilities in a
20 timely manner.

21 Mr. Maul, you're going to present this
22 matter?

23 MR. MAUL: Yes, I'd like to introduce
24 Sandy Fromm, our contract manager.

25 MS. FROMM: Good afternoon, I'm Sandra

1 Fromm. I'd like to make one correction to the
2 agenda item. This is actually the second
3 augmentation to this contract.

4 COMMISSIONER LAURIE: Thank you.

5 MS. FROMM: We're here today with a
6 contract amendment for siting peak load work
7 contract to add \$6 million to the existing
8 contract because we have reached the spending
9 authority under this contract.

10 The additional \$6 million we are
11 requesting would provide funds to handle the
12 unexpected workload arising out of the Governor's
13 Executive Orders. No other terms of the contract
14 would change as a result of this augmentation.

15 The estimate for the additional \$6
16 million needed was made in September, and was
17 based on projected workload through February of
18 2002. We are also currently in the process of
19 preparing an RFQ which is expected to be in place
20 in February of 2002.

21 Additionally, we are attempting to
22 obtain clarification on the impact of the recent
23 freeze instituted by the Governor. However, we
24 have been given assurances that the funds for this
25 augmentation do exist.

1 COMMISSIONER LAURIE: And where is the
2 funding going to come from, Sandra?

3 MR. MAUL: We have money out of our
4 current peak workload siting contract funds. The
5 money has been budgeted. We have been talking to
6 the Department of Finance, also the Department --
7 actually the agency, and the Resources Agency and
8 Department of Finance have both given us
9 assurances that we should move forward with this
10 contract because it's based on the money that's
11 already been budgeted for this activity.

12 COMMISSIONER LAURIE: If you're going to
13 send out an RFQ, and you've already tied up this
14 \$6 million, do you have sufficient funding for the
15 funding that's going to be necessary for the
16 additional contract?

17 MR. MAUL: Yes, we do. We have baseload
18 contract dollars both this year and next year that
19 would fund that RFQ.

20 COMMISSIONER LAURIE: Thank you. A
21 motion would be in order.

22 COMMISSIONER PERNELL: Mr. Chairman.

23 COMMISSIONER LAURIE: Commissioner
24 Pernell.

25 COMMISSIONER PERNELL: Mr. Chairman, I

1 would move the staff recommendations for the Aspen
2 Environmental Group.

3 COMMISSIONER ROSENFELD: Second.

4 COMMISSIONER LAURIE: Moved and seconded
5 to approve staff's recommendation. Public comment
6 on the question?

7 All in favor, please say aye.

8 (Ayes.)

9 COMMISSIONER LAURIE: Opposed? Motion
10 passes three to zero. Thank you, folks.

11 MR. MAUL: Thank you.

12 COMMISSIONER LAURIE: Just as a matter
13 of practice, normally the Commission takes public
14 comment after a motion and a second. I have
15 chosen not to do that because I prefer the public
16 comment before there is a motion on the floor,
17 allowing the public greater flexibility and
18 latitude. There's no rule. You can proceed
19 either way. But that's my explanation for
20 proceeding differently than we normally do.

21 Legislative Committee report, Mr.
22 Larson.

23 MR. LARSON: Mr. Chairman, we have the
24 2002 legislative proposals which are coming along.
25 I'd like to bring those up, put them over until

1 the next regularly scheduled meeting, however.

2 COMMISSIONER LAURIE: Thank you. Ms.

3 Mendonca, do you have any comment for today?

4 MS. MENDONCA: Thank you, Commissioner

5 Laurie. No, nothing specific this morning.

6 COMMISSIONER LAURIE: Thank you.

7 COMMISSIONER PERNELL: Question. What's

8 with the hat? You advocating the four-month

9 process? You have that all over your --

10 MS. MENDONCA: It says, "Witch Is It?

11 Four-month, six-month or 12-month?" And which is

12 spelled w-i-t-c-h.

13 COMMISSIONER PERNELL: Oh, okay.

14 COMMISSIONER LAURIE: Oh, I get it.

15 Sounds like a policy statement to me.

16 (Laughter.)

17 COMMISSIONER PERNELL: A fashion

18 statement.

19 COMMISSIONER LAURIE: And we have no

20 minutes. Legislative Committee and Oversight.

21 Commissioner Rosenfeld, Commissioner Pernell.

22 COMMISSIONER PERNELL: I have nothing at

23 this time.

24 COMMISSIONER LAURIE: Chief Counsel's

25 report. Mr. Blees.

1 MR. BLEES: Nothing other than the
2 closed session you mentioned earlier, sir.

3 COMMISSIONER LAURIE: Thank you.

4 COMMISSIONER ROSENFELD: Where is the
5 closed session?

6 COMMISSIONER LAURIE: We'll do it in my
7 office.

8 Mr. Larson.

9 MR. LARSON: No.

10 COMMISSIONER LAURIE: Any additional
11 public comment?

12 Seeing none, the meeting stands
13 adjourned. Thank you very much.

14 (Whereupon, at 12:10 p.m., the business
15 meeting was concluded.)

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CERTIFICATE OF REPORTER

I, VALORIE PHILLIPS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Business Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of November, 2001.

VALORIE PHILLIPS

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